## Maine Revised Statutes

# Title 26: LABOR AND INDUSTRY

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# Title 26: LABOR AND INDUSTRY

## Chapter 1: GENERAL PROVISIONS

### §1. DEFINITIONS

The following terms used in chapter 3 shall have the following meanings.

**1**. **Factory.** "Factory" means any premises where steam, water or other mechanical power is used in aid of any manufacturing process there carried on.

**1-A**. **Loan fund.** "Loan fund" means the Occupational Safety Loan Fund.

[ 1985, c. 372, Pt. A, §5 (NEW) .]

**2**. **Person.** "Person" means an individual, corporation, partnership, company or association and includes the State, state agencies, counties, municipal corporations, school districts and other public corporations or political subdivisions.

[ 1975, c. 519, §1 (AMD) .]

**2-A**. **Safety fund.** "Safety fund" means the Safety Education and Training Fund.

[ 1985, c. 372, Pt. A, §5 (NEW) .]

**3**. **Workshop.** "Workshop" means any premises, room or place, not being a factory, wherein any manual labor is performed, or for the purpose of gain in or incidental to any process of making, altering, repairing, ornamenting, finishing or adapting for sale any article or part of an article, and to which or over which premises, room or place the employer of the person or persons working therein has the right of access or control. The exercise of such manual labor in a private house or a private room by the family dwelling therein, or by any of them, or in case a majority of persons therein employed are members of such family, shall not of itself constitute such house or room a workshop within this definition.

[ 1967, c. 100, (AMD) .]

**4**. **Workplace.** "Workplace" means any plant, yard, premises, room or other place where an employee or employees are engaged in the performance of labor or service over which the employer has the right of access or control.

[ 1975, c. 519, §2 (NEW) .]

These terms shall have the meanings defined for them respectively in all laws of this State relating to the employment of labor, unless a different meaning is plainly required by the context.

SECTION HISTORY
1967, c. 100, (AMD). 1975, c. 519, §§1,2 (AMD). 1985, c. 372, §A5 (AMD).

## §1-A. LIVABLE WAGE DEFINED

As used in this Title, unless the context otherwise indicates, "livable wage" means the statewide average livable wage for a 2-parent household with 2 earners and 2 children as reported by the Department of Labor in the most recent biennial report required pursuant to section 1406. [2011, c. 569, §1 (AMD).]

SECTION HISTORY
2007, c. 363, §1 (NEW). 2011, c. 569, §1 (AMD).

## §2. REPORTS OF DEATHS AND INJURIES

**1**. **Reports of deaths.** The person in charge of any workplace as defined in section 1 provided by the State, a state agency, a county, a municipal corporation, a school district or other public corporation or political subdivision shall, within 8 hours after the occurrence, report the death of any person in the workplace or on the premises to the Director of the Bureau of Labor Standards, or the director's designee, by telephone or electronically, stating as fully as possible the cause of the death and the place where the deceased person has been sent and supplying other information relative to the death that may be required by the director who may investigate the causes of the death and require such precautions to be taken as will prevent the recurrence of similar events. A statement contained in any such report is not admissible in evidence in any action arising out of the death reported.

[ 2015, c. 138, §1 (AMD) .]

**2**. **Reports of serious physical injuries.** The person in charge of any workplace as defined in section 1 provided by the State, a state agency, a county, a municipal corporation, a school district or other public corporation or political subdivision shall, within 24 hours after the occurrence, report all serious physical injuries requiring immediate hospitalization sustained by any person in the workplace or on the premises to the Director of the Bureau of Labor Standards, or the director's designee, by telephone or electronically, stating as fully as possible the extent and cause of the injury and the place where the injured person has been sent and supplying other information relative to the injury that may be required by the director who may investigate the causes of the injury and require such precautions to be taken as will prevent the recurrence of similar events. A statement contained in any such report is not admissible in evidence in any action arising out of the accident reported.

[ 2015, c. 138, §1 (AMD) .]

**3**. **Serious physical injuries defined.** "Serious physical injuries," as used in this section, means an incident that results in an amputation, loss or fracture of any body part or that necessitates immediate hospitalization or formal admission to the inpatient service of a hospital or clinic for care or treatment.

[ 2015, c. 138, §1 (AMD) .]

SECTION HISTORY
1969, c. 274, §1 (AMD). 1971, c. 620, §13 (AMD). 1975, c. 519, §3 (AMD). 1975, c. 717, §1 (AMD). RR 1995, c. 2, §57 (COR). 2003, c. 244, §1 (RPR). 2015, c. 138, §1 (AMD).

## §3. CONFIDENTIALITY OF RECORDS

**1**. **Confidential records.** Except as provided in subsections 2 and 3, all information and reports received by the director or the director's authorized agents under this Title are confidential for the purposes of Title 1, section 402, subsection 3, paragraph A.

[ 2015, c. 250, Pt. C, §2 (NEW) .]

**2**. **Exceptions.** Reports of final bureau action taken under the authority of this Title are public records for the purposes of Title 1, chapter 13, subchapter 1.

[ 2015, c. 250, Pt. C, §2 (NEW) .]

**3**. **Authorized disclosure.** The director shall make or authorize any disclosure of information of the following types or under the following circumstances with the understanding that the confidentiality of the information will be maintained:

A. Information and reports to other government agencies if the director believes that the information will serve to further the protection of the public or assist in the enforcement of local, state and federal laws; and [2015, c. 250, Pt. C, §2 (NEW).]

B. Information and records pertaining to the workforce, employment patterns, wage rates, poverty and low-income patterns, economically distressed communities and regions and other similar information and data to the Department of Economic and Community Development and to the Governor's Office of Policy and Management for the purposes of analysis and evaluation, measuring and monitoring poverty and economic and social conditions throughout the State, and promoting economic development. [2015, c. 250, Pt. C, §2 (NEW).]

[ 2015, c. 250, Pt. C, §2 (NEW) .]

SECTION HISTORY
1971, c. 620, §13 (AMD). 1987, c. 534, §§B14,B23 (AMD). 1997, c. 132, §1 (AMD). 2011, c. 655, Pt. DD, §10 (AMD). 2011, c. 655, Pt. DD, §24 (AFF). 2015, c. 250, Pt. C, §2 (RPR).

## §4. ENFORCEMENT

The District Court and the Superior Court shall have original jurisdiction of actions brought for the recovery of fines and penalties imposed by this Title, and of prosecutions for violations of the provisions thereof.

## §5. INJUNCTIONS IN LABOR DISPUTES WITHOUT HEARING PROHIBITED

No court nor any judge or judges of any court may issue a preliminary or permanent injunction in any case involving or growing out of a labor dispute except after hearing the testimony of witnesses in open court with opportunity for cross-examination and after a showing that the injunction is necessary to avoid a substantial and irreparable injury to the complainant's property and that the public officers charged with the duty to protect the complainant's property are unable or unwilling to furnish adequate protection. The hearing shall be held after due and personal notice of the hearing has been given in such manner as the court directs to all known persons against whom relief is sought. [1989, c. 407, §§1, 2 (AMD).]

If a complainant alleges that the issuance of a temporary restraining order before the hearing can be held is necessary to avoid a substantial and irreparable injury to complainant's property, a temporary restraining order may be granted upon the expiration of any reasonable notice as the court may direct by order to show cause but in no case less than 48 hours. [1989, c. 407, §§1, 2 (AMD).]

The order to show cause must specify facts sufficient to justify the court to issue a preliminary injunction. The order shall be based upon testimony under oath or, in the discretion of the court, upon affidavits sworn to before a notary public. The order shall be served upon the party or parties to be restrained. [1989, c. 407, §§1, 2 (AMD).]

The temporary restraining order shall be effective for no longer than 5 days except as provided in this section. If the hearing for a preliminary injunction has begun before the expiration of the 5 days, and if the complainant has shown by clear and convincing evidence that an imminent danger of substantial and

irreparable injury to the complainant's property or person will exist if the restraining order is not continued, the restraining order may, in the court's discretion, be continued until a decision is reached upon the issuance of the preliminary injunction. [1989, c. 407, §§1, 2 (AMD).]

A temporary restraining order without notice may be issued only on the condition that the complainant has shown by clear and convincing evidence that an imminent danger of substantial and irreparable injury to the complainant's property or person exists in the absence of a restraining order. The order without notice may furthermore be issued only on the condition that the complainant must first file an undertaking with adequate security sufficient to recompense those enjoined for any loss, expense or damage caused by the issuance of the order, including all reasonable costs and expense for defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court. [1989, c. 407, §§1, 2 (AMD).]

No restraining order or injunctive relief may be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make reasonable effort to settle the dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. [1989, c. 407, §§1, 2 (NEW).]

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, may be held responsible or liable in any state court for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation in or actual authorization of these acts, or of ratification of these acts after actual knowledge of the acts. [1989, c. 407, §§1, 2 (NEW).]

Nothing in this section may deprive any party of any remedy that may be had at law. [1989, c. 407, §§1, 2 (AMD).]

SECTION HISTORY
1975, c. 460, (RPR). 1975, c. 623, §§35-A (AMD). 1987, c. 736, §43 (AMD). 1989, c. 407, §§1,2 (AMD).

## §6. INTERLOCUTORY APPEAL

Any party may appeal to the law court from an interlocutory order granting or denying a preliminary injunction in a case involving or growing out of a labor dispute, but such preliminary injunction shall not be stayed by the taking of such appeal. Any such appeal shall be heard at the first term of the law court commencing not less than 14 days after the appellant has filed the record on appeal with the clerk of the Superior Court and furnished the required copies of his brief to the clerk of the law court. Copies of the briefs of other parties shall be furnished to the clerk of the law court not more than 10 days after the appellant's brief has been filed. The law court shall affirm, modify or set aside the order with the greatest possible expedition and shall give such proceedings precedence over all other matters except older matters of the same character.

## §7. APPEALS

Any order by a board created and established under this Title, or any rule, regulation, determination or declaration formulated by the board or by the Director of the Bureau of Labor Standards is subject to review by the Superior Court, pursuant to Title 5, section 8058 or section 11001 et seq. [1995, c. 2, §58 (COR).]

SECTION HISTORY
1971, c. 620, §13 (AMD). 1977, c. 694, §440 (RPR). RR 1995, c. 2, §58 (COR).

## §9. NEGOTIATIONS ON BEHALF OF RETIRED EMPLOYEES

Employee organizations, unions and bargaining agents in the private sector engaged in collective bargaining with employers may negotiate on behalf of retired and retired disabled former employees of the employer with respect to pensions, retirement benefits and other benefits which, as a part of wages and benefits related to employment, are, were or may be carried with retired employees into retirement. [1979, c. 334, (NEW).]

SECTION HISTORY
1979, c. 334, (NEW).

# Chapter 3: BUREAU OF LABOR

## §41. DIRECTOR; PERSONNEL; SALARIES; EXPENSES

The Bureau of Labor Standards within the Department of Labor, as established and referred to in this Title as the "bureau," is maintained under the direction of an officer whose title is Director of Labor Standards and state factory inspector, referred to in this Title, except in chapter 13, as the "director." The director is appointed by the Commissioner of Labor and holds office at the pleasure of the commissioner. The director has an office at the seat of government. The director shall appoint, subject to the Civil Service Law, such employees as may be necessary. [1995, c. 560, Pt. H, §7 (AMD); 1995, c. 560, Pt. H, §17 (AFF).]

SECTION HISTORY
1967, c. 476, §20 (AMD). 1969, c. 504, §42 (AMD). 1971, c. 620, §1 (AMD). 1973, c. 715, §1 (AMD). 1975, c. 59, §1 (AMD). 1975, c. 771, §269 (AMD). 1977, c. 674, §23 (RPR). 1977, c. 696, §203 (AMD). 1981, c. 168, §§5,26 (AMD). 1985, c. 785, §B115 (AMD). 1989, c. 410, §24 (AMD). 1995, c. 560, §H7 (AMD). 1995, c. 560, §H17 (AFF).

## §42. POWERS AND DUTIES

The bureau shall collect, assort and arrange statistical details relating to all departments of labor and industrial pursuits in the State; to trade unions and other labor organizations and their effect upon labor and capital; to the number and character of industrial accidents and their effect upon the injured, their dependent relatives and upon the general public; to other matters relating to the commercial, industrial, social, educational, moral and sanitary conditions prevailing within the State, including the names of firms, companies or corporations, where located, the kind of goods produced or manufactured, the time operated each year, the number of employees classified according to age and sex and the daily and average wages paid each employee; and the exploitation of such other subjects as will tend to promote the permanent prosperity of the industries of the State. The director is authorized and empowered, subject to the approval of the Governor, to accept from any other agency of government, individual, group or corporation such funds as may be available in carrying out this section, and meet such requirements with respect to the administration of such funds, not inconsistent with this section, as are required as conditions precedent to receiving such funds. An accounting of such funds and a report of the use to which they were put must be included in the biennial report to the Governor. Each agency of government shall cooperate fully with the bureau's efforts to compile labor and industrial statistics. The director shall cause to be enforced all laws regulating the employment of minors; all laws established for the protection of health, lives and limbs of operators in workshops and factories, on railroads and in other places; all laws regulating the payment of wages; and all laws enacted for the protection of the working classes. During an investigation to enforce those laws, the director may request records and other information relating to an employer's compliance with unemployment compensation and workers' compensation laws, including information needed to determine whether the employer has properly classified a worker as an independent contractor, and shall report suspected violations of those laws to the state or federal agency responsible for enforcing them. The director may adopt, in accordance with the Maine Administrative Procedure Act, rules regarding all such laws, except where this authority is granted to a board or commission. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. The director shall, on or before the first day of July, biennially, report to the Governor, and may make such suggestions and recommendations as the director may deem necessary for the information of the Legislature. The director may from time to time cause to be printed and distributed bulletins upon any subject that is of public interest and benefit to the State and may conduct a program of research, education and promotion to reduce industrial accidents. The director may review various data, such as workers' compensation records, as well as other information relating to any public or private employer's safety experience. When any individual public or private employer's safety experience causes the director to question seriously the safe working environment of that employer, the director may

offer any safety education and consultation programs to that employer that may be beneficial in providing a safer work environment. If the employer refuses this assistance or is in serious noncompliance which may lead to injuries, or if serious threats to worker safety continue, then the director shall communicate concerns to appropriate agencies, such as the United States Occupational Safety and Health Administration. As used in this section, the term "noncompliance" means a lack of compliance with any applicable health and safety regulations of the United States Occupational Safety and Health Administration or other federal agencies. The bureau is responsible for the enforcement of indoor air quality and ventilation standards with respect to state-owned buildings and buildings leased by the State. The bureau shall enforce air quality standards in a manner to ensure that corrections to problems found in buildings be made over a reasonable period of time, using consent agreements and other approaches as necessary and reasonable. [1999, c. 649, §1 (AMD).]

The director may enter into reciprocal agreements with other states that maximize compliance with employment standards enforced by the director. [1993, c. 51, §1 (NEW).]

SECTION HISTORY
1971, c. 620, §13 (AMD). 1975, c. 771, §270 (AMD). 1977, c. 615, (AMD). 1987, c. 559, §B5 (AMD). 1987, c. 733, §5 (AMD). 1989, c. 502, §B24 (RPR). 1993, c. 51, §1 (AMD). 1997, c. 377, §1 (AMD). 1999, c. 649, §1 (AMD).

## §42-A. SAFETY EDUCATION AND TRAINING PROGRAMS

**1**. **Department to establish programs.** The department shall establish and supervise programs for the education and training of employers, owners, employees, educators and students in the recognition, avoidance and prevention of unsafe or unhealthful working conditions in employment. The department shall consult with and advise employers, owners, employees and organizations representing employers, owners and employees as to effective means of preventing occupational injuries and illnesses.

[ 1985, c. 372, Pt. A, §6 (NEW) .]

**2**. **Safety education and training program functions.** The functions of the safety education and training program shall include:

A. The development and application of a statewide safety education and training program to familiarize employers, supervisors, employees and union leaders with techniques of accident investigation and prevention, including education and training assistance to employers and employees under the chemical substance identification law in sections 1715 and 1720; [1987, c. 559, Pt. B, §6 (AMD).]

B. The development and utilization of consultative educational techniques to achieve long-range solutions to occupational safety and health problems; [1985, c. 372, Pt. A, §6 (NEW).]

C. The acquisition, development and distribution of occupational safety and health pamphlets, booklets, brochures and other appropriate safety and health media as may be useful to accomplish the objectives of this section; [1985, c. 372, Pt. A, §6 (NEW).]

D. The development and administration of a program for employers, with special emphasis on small business employers, providing technical and educational assistance on matters of occupational safety and health; [1985, c. 372, Pt. A, §6 (NEW).]

E. The development and implementation of a training and education program for department staff engaged in the administration and enforcement of this section; [1987, c. 782, §2 (AMD).]

E-1. The development and administration of programs to educate employers and employees regarding the Whistleblowers' Protection Act, chapter 7, subchapter V-B; [1991, c. 615, Pt. A, §18 (AMD).]

E-2. The support for the development of long-term strategies to improve occupational health and safety professional education and resources. The department may award contracts to public and private nonprofit organizations as seed money to develop programs that will serve this purpose and that will develop other funding sources in the future; and [1991, c. 615, Pt. A, §19 (NEW).]

F. The conduct of other activities as necessary for the implementation of an effective safety education and training program. [1985, c. 372, Pt. A, §6 (NEW).]

[ 1991, c. 615, Pt. A, §§18, 19 (AMD) .]

**3**. **Programs provided upon request.** The department shall provide safety training programs, upon request, for employees and employers. Priority for the development of safety training programs shall be in those occupations which pose the greatest hazard to the safety and health of employees.

[ 1985, c. 372, Pt. A, §6 (NEW) .]

**4**. **Continuing research.** The department may conduct continuing research into methods, means, operations, techniques, processes and practices necessary for improvement of occupational safety and health of employees.

[ 1985, c. 372, Pt. A, §6 (NEW) .]

**5**. **Consulting services.** The department shall, upon request, provide a full range of occupational safety and health consulting services to any employer or employee group. These consulting services may include providing employers or employees with information, advice and recommendations on maintaining safe employment or places of employment, and on applicable occupational safety and health standards, techniques, devices, methods, practices or programs.

[ 1985, c. 372, Pt. A, §6 (NEW) .]

**6**. **Contract.** The department may contract with others to perform these functions.

[ 1985, c. 372, Pt. A, §6 (NEW) .]

SECTION HISTORY
1985, c. 372, §A6 (NEW). 1987, c. 559, §B6 (AMD). 1987, c. 782, §§2,3 (AMD). 1991, c. 615, §§A18,19 (AMD).

## §42-B. BUREAU TO FURNISH POSTER OR NOTICE OUTLINING STATE LABOR LAWS

**1**. **Bureau to furnish poster or notice.** The bureau shall produce and furnish to employers posters or notices in printed form outlining state labor laws applicable to those employers and regulating:

A. Employment of minors; [2001, c. 242, §1 (NEW).]

B. Time of payment of wages; [2001, c. 242, §1 (NEW).]

C. Safety and health of employees; and [2001, c. 242, §1 (NEW).]

D. Family medical leave. [2001, c. 242, §1 (NEW).]

The posters or notices may also include such other laws as may be required or useful.

[ 2001, c. 242, §1 (NEW) .]

**2**. **Notice of cause for termination.** The bureau shall include in one of the posters or notices under subsection 1 the following information regarding at-will employment:

> Under Maine law, an at-will employee may be terminated for any reason not specifically prohibited by law. In most instances, you are an at-will employee unless you are covered by a collective bargaining agreement or other contract that limits termination. If you have questions about at-will employment, contact your human resources department or the State Department of Labor, Bureau of Labor Standards.

The notice must be printed in bold type of at least 24 points.

[ 2003, c. 442, §1 (AMD) .]

**3**. **Employer to post notice.** An employer subject to the laws outlined in the printed poster or notice shall post and keep posted in a place accessible to the employer's employees a copy of the printed poster or notice furnished by the bureau. An employer who violates this section is subject to the penalties set forth in section 704.

[ 2001, c. 242, §1 (NEW) .]

SECTION HISTORY
2001, c. 242, §1 (NEW). 2003, c. 442, §1 (AMD).

## §43. FACTS AND STATISTICS; SEAL; TESTIMONY; SOURCES CONFIDENTIAL

The director may furnish a written or printed list of interrogatories for the purpose of gathering such facts and statistics as are contemplated, to any person, or the proper officer of any corporation operating within the State, and may require full and complete answers thereto under oath. The director shall have a seal, and may take and preserve testimony, issue subpoenas, administer oaths and examine witnesses under oath in all matters relating to the duties required of the bureau. Such testimony must be taken in some suitable place in the vicinity to which the testimony is applicable. Witnesses summoned and testifying before the director must be paid, from any funds at the disposal of the bureau, the same fees as witnesses before the Superior Court. In the report, except safety and health reports, names of individuals, firms or corporations supplying the information called for by this section may not be used unless by written permission, such information being confidential and not for the purpose of disclosing personal affairs. [2013, c. 473, §1 (AMD).]

SECTION HISTORY
1971, c. 620, §13 (AMD). 2013, c. 473, §1 (AMD).

## §44. RIGHT OF ACCESS

The director as state factory inspector, and any authorized agent of the bureau, may enter any workplace as defined in section 1, provided by the State or by a state agency, county, municipal corporation, school district or other public corporation or political subdivision when the same are open or in operation, for the purpose of gathering facts and statistics under sections 42 to 44, and may examine the methods of protecting employees from danger, the safety and health of employees and sanitary conditions in and around such buildings and places, and may make a record of such inspection. Upon petition of the director, a Superior Court in the county in which any refusal to permit entry or fact gathering or inspection was alleged to have occurred may order appropriate injunctive relief against any person in charge of the workplace who refuses entry to the director or authorized agent of the bureau. [2015, c. 138, §2 (AMD).]

Each employer subject to this section shall make, keep and preserve, and make available to the director or the director's authorized agent, upon request, such records regarding the employer's activities relating to occupational safety and health as the director may prescribe by rule as necessary or appropriate for the enforcement of section 45 or any rule adopted pursuant to section 565 or for developing information

regarding the causes and prevention of occupational accidents, diseases and illnesses. Any information obtained by the director must be obtained with a minimum burden upon employers, especially those employing a small work force. [2013, c. 473, §2 (AMD).]

The bureau shall also issue rules requiring that employers through posting of notices or other appropriate means keep their employees informed of their protections and obligations under this chapter and chapter 6, including the provisions of applicable standards. [2013, c. 473, §2 (AMD).]

SECTION HISTORY
1971, c. 620, §13 (AMD). 1975, c. 519, §4 (AMD). 2013, c. 473, §2 (AMD). 2015, c. 138, §2 (AMD).

## §44-A. WALKAROUND INSPECTIONS

A representative of the employer and an authorized employee representative shall be given an opportunity to accompany the director or his authorized agent during the physical inspection of the workplace of any employer, subject to this section, for the purpose of aiding such inspection. Where there is no authorized employee representative, the director or his authorized agent shall consult with a reasonable number of employees concerning matters of safety in the workplace. The employee representative shall not lose any privilege or compensation during or because of his attendance in any such inspection. [1975, c. 519, §5 (NEW).]

SECTION HISTORY
1975, c. 519, §5 (NEW).

## §45. NOTICE OF IMPROPER CONDITIONS

If, upon inspection, the director or any authorized agent of the bureau finds that an employer has violated a requirement of section 561-A or any rule adopted pursuant to section 565, the director or the authorized agent of the bureau shall immediately issue a citation to the employer. Each citation must be in writing and describe with particularity the nature of the violation, including a reference to the provision of this Title or the rules alleged to have been violated. In addition, the citation must fix a specific time for the abatement of the violation. [2013, c. 473, §3 (AMD).]

Each citation issued under this section, or a copy or copies, must be prominently posted at or near each place where a violation referred to in the citation occurred or existed. In addition, employees must have access to their toxic exposure records or records of employee observation of exposure monitoring and measuring. [2013, c. 473, §3 (AMD).]

SECTION HISTORY
1965, c. 200, §1 (AMD). 1967, c. 494, §21 (AMD). 1969, c. 122, (AMD). 1971, c. 446, §1 (RPR). 1971, c. 620, §13 (AMD). 1975, c. 519, §6 (RPR). 1979, c. 95, §1 (AMD). 2013, c. 473, §3 (AMD).

## §45-A. APPLICATION OF SECTIONS 44 AND 45

***(REPEALED)***

SECTION HISTORY
1965, c. 200, §2 (NEW). 1969, c. 274, §2 (AMD). 1975, c. 519, §7 (AMD). 1979, c. 197, §1 (RP).

## §46. FAILURE TO COOPERATE OR COMPLY

Whoever, being duly summoned under section 43, willfully neglects or refuses to attend, or refuses to answer any question propounded to him concerning the subject of such examination as provided in said section 43, or whoever, being furnished by the director with a written or printed list of interrogatories, neglects or refuses to answer and return the same under oath, shall be punished by a fine of not less than $25 nor more than $100, or by imprisonment for not more than 30 days, or by both. No witness shall be compelled to go outside the county in which he resides to testify. [1971, c. 620, §13 (AMD).]

Any employer who willfully or repeatedly violates any requirements of section 45 or any standard, rule or order promulgated pursuant to section 565 may be assessed a civil penalty of not more than $1,000 for each day during which such violation continues. [1975, c. 519, §8 (RPR).]

Any employer who has received a citation for a serious violation of the requirements of section 45 or of any standard, rule or order issued pursuant to section 565, shall be assessed a civil penalty of up to $1,000 for each such violation. [1975, c. 519, §8 (RPR).]

Any employer who has received a citation for a violation of the requirements of section 45 or of any standard, rule or order issued pursuant to section 565, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to $1,000 for each such violation. [1975, c. 519, §8 (RPR).]

Any employer who fails to correct a violation for which a citation has been issued under section 45 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board in the case of any review proceeding initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than $1,000 for each day during which such failure or violation continues. [1975, c. 519, §8 (RPR).]

Any employer who willfully or repeatedly violates any standard, rule or order promulgated pursuant to section 565, and that violation is specifically determined to be a serious violation, shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 6 months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than $20,000, or by imprisonment for not more than one year, or by both. [1983, c. 296, (AMD).]

Any person who gives advance notice of any inspection to be conducted pursuant to this chapter without authority from the director shall, upon conviction, be punished by a penalty of not less than $500 nor more than $1,000, or by imprisonment for not more than 6 months, or by both. [1975, c. 519, §8 (RPR).]

Any employer who violates any of the posting requirements, as prescribed in section 45, shall be assessed a penalty of not more than $1,000 for each violation. [1975, c. 519, §8 (RPR).]

Civil penalties owed under this chapter shall be paid to the director for deposit with the Treasurer of State, and may be recovered in a civil action in the name of the State brought in the Superior Court of the county where the violation is alleged to have occurred or where the employer has its principal office. Interest shall accrue on such penalties at the rate of 1 1/2% per month except that the interest shall be suspended during the pendency of an appeal. [1975, c. 519, §8 (RPR).]

For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists or from one or more practices, means, methods, operations or processes which have been adopted or are in use in such place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. [1975, c. 519, §8 (RPR).]

SECTION HISTORY
1971, c. 620, §13 (AMD). 1975, c. 519, §8 (AMD). 1983, c. 296, (AMD).

## §47. MUNICIPAL OFFICERS TO FURNISH INFORMATION

All state, county, city and town officers are directed to furnish the director, upon his request, such statistical or other information contemplated by sections 42 to 45 as shall be in their possession as such officers. [1971, c. 620, §13 (AMD).]

SECTION HISTORY
1971, c. 620, §13 (AMD).

## §48. REPORTS

All reports to the Bureau of Labor Standards involving deaths, injuries and occupational diseases shall be available to the injured employee, his survivors or representatives upon written request and upon payment of reasonable cost for the copies. [1981, c. 168, §6 (AMD).]

SECTION HISTORY
1973, c. 418, (NEW). 1975, c. 59, §2 (AMD). 1981, c. 168, §6 (AMD).

## §49. IMMINENT DANGER

A Superior Court in the county in which the imminent danger is alleged to exist shall have jurisdiction, upon petition of the director, to restrain any conditions or practices in any place of employment subject to section 45 which are such that a danger exists which will reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. [1975, c. 519, §9 (NEW).]

SECTION HISTORY
1975, c. 519, §9 (NEW).

## §50. INSPECTIONS IN RESPONSE TO COMPLAINT

Any employee or a representative of an employee of the State, a state agency, county, municipal corporation, school district or other public corporation or political subdivision who believes that a violation of an occupational safety or health standard exists that threatens physical harm or that an imminent danger exists may request an inspection by giving notice to the director or his authorized agent of such violation or danger. Except in cases of imminent danger, any such notice shall be in writing, shall set forth with reasonable particularity the grounds for the notice, shall be signed by the employee or his representative and a copy shall be provided the employer or his agent no later than the time of the inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or upon any record published, released or made available in any other respect. If upon the receipt of such notification, the director or his authorized agent determines that there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection as soon as practicable to determine if such violation or danger exists. If the director or his authorized agent determines that there are no reasonable grounds to believe that a violation or danger exists, he shall notify the employee or representative of the employee in writing of such determination. [1975, c. 519, §10 (NEW).]

SECTION HISTORY
1975, c. 519, §10 (NEW). 1979, c. 95, §2 (AMD).

## §51. COMMISSION ON SAFETY AND HEALTH IN THE MAINE WORKPLACE *(REPEALED)*

SECTION HISTORY
1987, c. 559, §B7 (NEW). 1991, c. 93, §2 (AMD). 1999, c. 162, §1 (AMD). 2003, c. 673, §Q1 (AMD). 2007, c. 395, §29 (RP).

## §52. LIENS

**1**. **Form; effect.** Upon the failure of an employer to pay the amount assessed for unpaid wages or severance pay pursuant to chapters 7 and 15, the director may file in the registry of deeds of any county a certificate stating the name of the employer; the employer's address; the amount of unpaid wages or severance pay; and either that the time permitted for an appeal has expired without the appeal having been taken or that delay will jeopardize collection. When the certificate is duly filed and recorded, the amount of the assessment is a lien upon the entire interest of the employer, legal or equitable, in any real or tangible personal property situated within the jurisdiction of the office in which that certificate was filed. A lien obtained in this manner is a lien for unpaid wages or severance pay and the priority of the lien is governed by the laws of this State. The lien is subordinate to any real estate mortgage previously recorded as required by law. A lien for unpaid wages or severance pay is not valid against one who purchases personal property from the employer in the usual course of business, in good faith and without actual notice of the lien. The lien may be enforced against any real or personal property by a civil action in the name of the director. The director shall discharge any such lien upon receiving, from any employer against whose property a lien certificate has been filed, a good and sufficient bond with sureties conditioned upon the payment of the amount of unpaid wages or severance pay as finally determined together with any additional amount that may have become due or may have accrued under this chapter and costs of court, if any.

The remedies in this subsection are in addition to all other remedies.

[ 1999, c. 28, §1 (NEW) .]

**2**. **Filing lien.** Certificates of liens for unpaid wages or severance pay, or certificates discharging the liens prepared in accordance with this section, must be received, recorded and indexed by registrars of deeds in the same manner as similar instruments are recorded and indexed. The fee to be paid by the director for recording each certificate is the usual and customary fee, which need not be prepaid. This recording fee along with all other filing fees is the liability of the employer and must be assessed as part of the lien pursuant to subsection 1.

[ 1999, c. 28, §1 (NEW) .]

**3**. **Enforcement of lien.** After any assessment has become final and rights of appeal exhausted or lost by virtue of failure to exercise those rights, any property, real or personal, upon which a lien has been claimed under this chapter may be sold after due notice in conformity with the laws applicable to sales of real or personal property on executions issued in personal actions. In connection with such sales, the director has the same rights, privileges, duties and responsibilities as one in whose favor an execution is issued.

[ 1999, c. 28, §1 (NEW) .]

SECTION HISTORY
1999, c. 28, §1 (NEW).

## §53. ADDITIONAL PENALTIES

In addition to any penalties provided in chapter 7, subchapters I to IV, the director may assess a forfeiture against any employer, officer, agent or other person who violates any provision of chapter 7, subchapters I to IV for each violation of those subchapters. The forfeiture may not exceed $1,000 or the amount provided in law or rule as a penalty for the specific violation, whichever is less. The Attorney General, upon complaint of the director, shall institute a civil action to recover the forfeiture. Any amount recovered must be deposited with the Treasurer of State. The director shall adopt rules to govern the administration of the civil money forfeiture provisions. The rules must include a right of appeal by the employer and a range of monetary assessments with consideration given to the size of the employer's

business, the good faith of the employer, the gravity of the violation and the history of previous violations. The rules adopted pursuant to this section are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. [1999, c. 181, §1 (NEW).]

SECTION HISTORY
1999, c. 181, §1 (NEW).

# Chapter 4: OCCUPATIONAL HEALTH AND SAFETY

## §61. SAFETY EDUCATION AND TRAINING FUND

**1**. **Fund established.** To accomplish the objectives outlined in section 42-A, there is established in the State Treasury a special fund, known as the Safety Education and Training Fund. The safety fund shall be administered by the commissioner. The department shall have authority over the safety fund and may do all things necessary or convenient in the administration of the safety fund and shall formulate and adopt rules, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, governing its administration and maintenance, and perform all other functions which the laws of this State specifically authorize or which are necessary or appropriate. All money and securities in the safety fund shall be held in trust by the Treasurer of State for the purpose of funding the safety education and training program under section 42-A and shall not be money or property for the general use of the State. The fund shall not lapse. The Treasurer of State shall notify the commissioner and the Legislature of interest credited and the balance of the safety fund as of June 30th of each year.

[ 1985, c. 372, Pt. A, §7 (NEW) .]

**1-A**. **Bureau of Insurance report.** On or before July 1st of each year, the Bureau of Insurance shall provide to the commissioner the amounts of actual losses, excluding medical payments, paid by each workers' compensation individual self-insurer and workers' compensation group self-insurer during the previous calendar year.

[ 1997, c. 126, §6 (NEW) .]

**2**. **Source of funds.** The commissioner or the commissioner's designee shall annually assess a levy based on actual annual workers' compensation paid losses, excluding medical payments, paid in the most recent calendar year for which data is available by employers under former Title 39, the Workers' Compensation Act or Title 39-A, Part 1, the Maine Workers' Compensation Act of 1992. As soon as practicable after July 1st of each year, the commissioner or the commissioner's designee shall assess upon and collect from each insurance carrier licensed to do workers' compensation business in the State, and each group and individual self-insured employer authorized to make workers' compensation payments directly to their employees, a sum equal to that proportion of the current fiscal year's appropriation, exclusive of any federal funds, for the safety education and training program that the total workers' compensation benefits, exclusive of medical payments, paid by each licensed carrier or each group or individual self-insured employer, bear to the total of the benefits paid by all licensed carriers, and group and individual self-insured employers during the most recent calendar year for which data is available, except that the total amount levied annually may not exceed 1% of the total of the compensation benefits paid by all licensed carriers, and group and individual self-insured employers during the most recent calendar year for which data is available. A licensed carrier or group or individual self-insured must be assessed based on all benefits paid, exclusive of medical payments, during any year for which the carrier was licensed or the group or individual self-insured employer was authorized to make workers' compensation payments directly to their employees for any portion of the year.

[ 2013, c. 467, §2 (AMD) .]

**3**. **Notice of assessments.** The Commissioner of Labor or the commissioner's designee shall send notice of the assessments by certified mail to each licensed carrier and each group or individual self-insured employer. Payment of assessments must be received in an office of the Department of Labor designated by the commissioner before a date specified in the notice, but not more than 90 days after the date of the mailing. The department may, through the rules governing this section, assess penalties for late payment. Such penalties may not exceed 6% per year.

[ 1993, c. 52, §2 (AMD) .]

**4**. **Assessments constitute element of loss.** The levy assessment constitutes an element of loss for the purpose of establishing rates for workers' compensation insurance. Funds derived from this levy must be deposited in the safety fund and must be appropriated by the Legislature for the operation of this program.

[ 1993, c. 52, §2 (AMD) .]

**5**. **Violations.** Any insurance company, group self-insured association or self-insured employer subject to this section that willfully fails to pay an assessment in accordance with this section commits a civil violation for which a forfeiture of not more than $500 may be adjudged for each day payment is not made following the due date.

[ 1993, c. 52, §3 (NEW) .]

SECTION HISTORY
1985, c. 372, §A7 (NEW). 1985, c. 819, §C5 (AMD). 1987, c. 559, §B8 (AMD). 1987, c. 660, §2 (AMD). 1991, c. 885, §E34 (AMD). 1991, c. 885, §E47 (AFF). 1993, c. 52, §§1-3 (AMD). 1997, c. 126, §6 (AMD). 1999, c. 57, §B5 (AMD). 2013, c. 467, §2 (AMD).

## §62. OCCUPATIONAL SAFETY LOAN FUND

***(REPEALED)***

SECTION HISTORY
1985, c. 372, §A7 (NEW). 1991, c. 9, §HH (AMD). 1991, c. 885, §E35 (AMD). 1991, c. 885, §E47 (AFF). 2001, c. 398, §§B1,2 (AMD). 2003, c. 451, §O1 (AMD). 2003, c. 673, §Q2 (RP).

## §63. OCCUPATIONAL SAFETY LOANS

***(REPEALED)***

SECTION HISTORY
1985, c. 372, §A7 (NEW). 1987, c. 559, §§B9-B11 (AMD). 1989, c. 483, §§A35,A36 (AMD). 1991, c. 93, §§3,4 (AMD). 2001, c. 398, §§B3-5 (AMD). 2003, c. 451, §§O2,3 (AMD). 2003, c. 673, §Q3 (RP).

## §64. COVERAGE

**1**. **Application of chapter.** This chapter applies to all employers, employees and places of employment in the State except employees of the Federal Government.

[ 1985, c. 372, Pt. A, §7 (NEW) .]

**2**. **Construction.** Nothing in this chapter may be construed to supersede or in any manner affect any workers' compensation law or to enlarge, diminish or affect in any manner common law or statutory rights, duties or liabilities of employers or employees under any law with respect to injuries, diseases or death of employees arising out of and in the course of employment.

[ 1985, c. 372, Pt. A, §7 (NEW) .]

SECTION HISTORY
1985, c. 372, §A7 (NEW).

# Chapter 5: HEALTH AND SAFETY REGULATIONS

## Subchapter 1: BEDDING AND UPHOLSTERED FURNITURE

## Article 1: GENERAL PROVISIONS

### §81. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
1965, c. 106, §1 (AMD). 1971, c. 620, §13 (AMD). 1975, c. 59, §3 (AMD). 1981, c. 168, §7 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

### §82. ADMINISTRATION AND ENFORCEMENT

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1975, c. 36, (AMD). 1977, c. 694, §441 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

### §83. PROCEEDS PAYABLE INTO THE GENERAL FUND

***(REPEALED)***

SECTION HISTORY
1969, c. 149, §1 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

### §84. PENALTIES

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

## Article 2: ADMINISTRATION AND OPERATION

### §111. REGISTRATION

***(REPEALED)***

SECTION HISTORY
1969, c. 149, §2 (RPR). 1971, c. 620, §13 (AMD). 1973, c. 555, §1 (AMD). 1985, c. 168, (AMD). 1991, c. 528, §K1 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §K1 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

### §111-A. ISSUANCE OF CERTIFICATE OF REGISTRATION AND APPEAL PROCEDURES

***(REPEALED)***

SECTION HISTORY

1969, c. 149, §3 (NEW). 1971, c. 620, §13 (AMD). 1977, c. 694, §442 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

## §112. ARTICLES TO BE TAGGED

***(REPEALED)***

SECTION HISTORY
1967, c. 138, (AMD). 1969, c. 149, §4 (AMD). 1971, c. 620, §13 (AMD). 1975, c. 623, §36 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

## §113. STERILIZATION

***(REPEALED)***

SECTION HISTORY
1965, c. 106, §2 (AMD). 1965, c. 290, (AMD). 1965, c. 513, §45 (RPR). 1969, c. 149, §5 (AMD). 1971, c. 620, §13 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

## §114. PERMITS

***(REPEALED)***

SECTION HISTORY
1969, c. 149, §6 (AMD). 1971, c. 620, §13 (AMD). 1977, c. 694, §443 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

## §115. REQUIREMENT OF CERTIFICATE OF REGISTRATION FOR SALE

***(REPEALED)***

SECTION HISTORY
1969, c. 149, §7 (NEW). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

# Subchapter 1-A: STUFFED TOYS

# Article 1: GENERAL PROVISIONS

## §121. CONSTRUCTION

***(REPEALED)***

SECTION HISTORY
1965, c. 106, §3 (NEW). 1967, c. 74, §1 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

## §122. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
1965, c. 106, §3 (NEW). 1967, c. 74, §2 (AMD). 1971, c. 620, §13 (AMD). 1975, c. 59, §3 (AMD). RR 1995, c. 2, §59 (COR). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

## §123. ADMINISTRATION AND RULES AND REGULATIONS

***(REPEALED)***

SECTION HISTORY
1965, c. 106, §3 (NEW). 1967, c. 74, §3 (AMD). 1971, c. 620, §13 (AMD). 1977, c. 694, §444 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

## §124. PROCEEDS PAYABLE INTO GENERAL FUND

***(REPEALED)***

SECTION HISTORY
1965, c. 106, §3 (NEW). 1969, c. 77, (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

## §125. VIOLATION; SUSPENSION AND CONFISCATION

***(REPEALED)***

SECTION HISTORY
1965, c. 106, §3 (NEW). 1967, c. 74, §4 (AMD). 1971, c. 620, §13 (AMD). 1977, c. 694, §445 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

## §126. PENALTIES

***(REPEALED)***

SECTION HISTORY
1965, c. 106, §3 (NEW). 1967, c. 74, §5 (AMD). 1971, c. 620, §13 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

# Article 2: ADMINISTRATION AND OPERATION

## §131. REGISTRATION

***(REPEALED)***

SECTION HISTORY
1965, c. 106, §3 (NEW). 1967, c. 74, §6 (AMD). 1971, c. 620, §13 (AMD). 1973, c. 555, §2 (AMD). 1991, c. 528, §K2 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §K2 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

## §132. ISSUANCE OF CERTIFICATE OF REGISTRATION AND APPEAL PROCEDURES

***(REPEALED)***

SECTION HISTORY
1965, c. 106, §3 (NEW). 1967, c. 74, §7 (AMD). 1971, c. 620, §13 (AMD). 1977, c. 694, §446 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

## §133. MATERIAL AND PROCESSED MATERIAL

***(REPEALED)***

SECTION HISTORY
1965, c. 106, §3 (NEW). 1967, c. 74, §8 (AMD). 1971, c. 620, §13 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

## §134. REQUIREMENT OF CERTIFICATE OF REGISTRATION FOR SALE

***(REPEALED)***

SECTION HISTORY
1965, c. 106, §3 (NEW). 1967, c. 74, §9 (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

## §135. ARTICLES TO BE TAGGED

***(REPEALED)***

SECTION HISTORY
1975, c. 176, (NEW). 1975, c. 623, §§36-A (AMD). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

# Subchapter 1-B: FLAMMABLE FABRICS

## §136. LIAISON FOR FEDERAL FLAMMABLE FABRICS ACT

***(REPEALED)***

SECTION HISTORY
1975, c. 336, (NEW). RR 1995, c. 2, §60 (COR). 1999, c. 731, §K3 (AFF). 1999, c. 731, §K1 (RP).

# Subchapter 2: BOILERS AND PRESSURE VESSELS

# Article 1: GENERAL PROVISIONS

## §141. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
1965, c. 425, §15 (AMD). 1971, c. 620, §13 (AMD). 1973, c. 33, §1 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## §142. EXEMPTIONS

***(REPEALED)***

SECTION HISTORY
1971, c. 55, (AMD). 1973, c. 33, §2 (AMD). 1973, c. 452, §2 (AMD). 1973, c. 669, §1 (AMD). 1973, c. 788, §115 (AMD). 1975, c. 623, §37 (AMD). 1989, c. 483, §A37 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## §143. PENALTIES

***(REPEALED)***

SECTION HISTORY
1973, c. 452, §3 (AMD). 1981, c. 698, §114 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## Article 2: ADMINISTRATION

### §171. BOARD OF BOILER RULES

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1975, c. 771, §271 (AMD). 1983, c. 347, §1 (AMD). 1983, c. 812, §155 (AMD). 1989, c. 410, §25 (AMD). 1989, c. 503, §B108 (AMD). 1989, c. 878, §A68 (RPR). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

### §172. EXPENSES OF BOARD MEMBERS

***(REPEALED)***

SECTION HISTORY
1983, c. 812, §156 (RPR). 1983, c. 862, §74 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

### §173. RULES AND REGULATIONS

***(REPEALED)***

SECTION HISTORY
1971, c. 51, §§1,2 (AMD). 1973, c. 33, §§3,4 (AMD). 1977, c. 694, §447 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

### §174. INSTALLATION OF NEW BOILERS AND PRESSURE VESSELS

***(REPEALED)***

SECTION HISTORY
1971, c. 51, §3 (AMD). 1973, c. 33, §5 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

### §175. CHIEF AND DEPUTY INSPECTORS

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1975, c. 771, §272 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

### §176. DEPUTY AND AUTHORIZED INSPECTORS TO BE EXAMINED

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1977, c. 694, §§448,448-A (AMD). 1989, c. 502, §A104 (AMD). 1989, c. 590, §1 (AMD). 1989, c. 878, §A69 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## §177. CHIEF AND DEPUTY INSPECTORS TO FURNISH BOND

***(REPEALED)***

SECTION HISTORY
1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## §178. STATIONARY STEAM ENGINEERS AND BOILER OPERATORS

***(REPEALED)***

SECTION HISTORY
1971, c. 447, §1 (NEW). 1973, c. 452, §1 (RPR). 1973, c. 669, §2 (AMD). 1973, c. 788, §§116,117 (AMD). 1977, c. 694, §§449,450 (AMD). 1981, c. 90, §§1,2 (AMD). 1981, c. 348, §§1-5 (AMD). 1989, c. 483, §A38 (AMD). 1989, c. 590, §2 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

# Article 3: MANAGEMENT AND OPERATION

## §211. HEATING PLANTS

***(REPEALED)***

SECTION HISTORY
1971, c. 51, §4 (AMD). 1981, c. 90, §3 (RP).

## §212. WELDING ON BOILERS; CERTIFICATES FOR WELDERS

***(REPEALED)***

SECTION HISTORY
1969, c. 345, §1 (AMD). 1977, c. 694, §451 (AMD). 1981, c. 90, §4 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## §213. OPERATION OF CONDEMNED VESSELS

***(REPEALED)***

SECTION HISTORY
1973, c. 33, §6 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## §214. CONDEMNED VESSELS STAMPED

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1973, c. 33, §7 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## §215. REGISTRATION; STAMPING

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1973, c. 33, §8 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## §216. EXAMINATION BY MUNICIPAL OFFICERS; CERTIFICATE; FILING

***(REPEALED)***

SECTION HISTORY
1981, c. 90, §5 (RP).

## §217. DUTY OF MUNICIPAL OFFICERS WHEN NOTICE OF INCOMPETENT OPERATOR RECEIVED

***(REPEALED)***

SECTION HISTORY
1981, c. 90, §5 (RP).

## §218. ATTENDANTS FOR POWER BOILERS

***(REPEALED)***

SECTION HISTORY
1983, c. 347, §2 (NEW). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

# Article 4: INSPECTIONS

## §241. CERTIFICATE REQUIRED

SECTION HISTORY
1971, c. 51, §5 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## §242. TEMPORARY CERTIFICATE

SECTION HISTORY
1971, c. 620, §13 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## §243. INSURANCE

SECTION HISTORY
1969, c. 345, §2 (AMD). 1971, c. 620, §13 (AMD). 1989, c. 483, §A39 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## §244. INSPECTION REQUIRED; CERTIFICATES ISSUED

SECTION HISTORY
1965, c. 211, §1 (AMD). P&SL 1971, c. 179, §F1 (AMD). 1971, c. 620, §13 (AMD). 1973, c. 34, §§1-3 (AMD). 1977, c. 694, §452 (RPR). 1989, c. 590, §3 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## §245. INSPECTION CHARGE

SECTION HISTORY

1965, c. 211, §2 (AMD). 1971, c. 620, §13 (AMD). 1977, c. 149, (AMD). 1989, c. 590, §4 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## §246. POWERS OF CHIEF INSPECTOR

SECTION HISTORY
1971, c. 51, §6 (AMD). 1977, c. 694, §453 (AMD). 1989, c. 483, §A40 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

## §247. AUTHORIZED INSPECTORS; DUTIES

SECTION HISTORY
1971, c. 51, §7 (AMD). 1971, c. 620, §13 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H8 (RP).

# Subchapter 2-A: VIDEO DISPLAY TERMINAL OPERATORS

## §251. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 512, (NEW).]

**1**. **Bureau.** "Bureau" means the Department of Labor, Bureau of Labor Standards.

[ 1989, c. 512, (NEW) .]

**2**. **Employ.** "Employ" means to employ or permit to work.

[ 1989, c. 512, (NEW) .]

**3**. **Employee.** "Employee" means any person engaged to work on a steady or regular basis as an operator by an employer located or doing business in the State.

[ 1989, c. 512, (NEW) .]

**4**. **Employer.** "Employer" means any person, partnership, firm, association or corporation, public or private, that uses 2 or more terminals at one location within the State. The term "employer" includes, but is not limited to:

A. Any person, partnership, firm, association or corporation acting in the interest of any employer, directly or indirectly; and [1989, c. 512, (NEW).]

B. The State, in its capacity as an employer. [1989, c. 512, (NEW).]

[ 1991, c. 305, §1 (AMD); 1991, c. 305, §3 (AFF) .]

**5**. **Operator.** "Operator" means any employee whose primary task is to operate a terminal for more than 4 consecutive hours, exclusive of breaks, on a daily basis.

[ 1989, c. 512, (NEW) .]

**6**. **Terminal.** "Terminal" means any electronic video screen data presentation machine, commonly called video display terminals, VDTs or cathode-ray tubes, CRTs. The term does not apply to television or oscilloscope screens, cash registers or memory typewriters.

[ 1989, c. 512, (NEW) .]

SECTION HISTORY
1989, c. 512, (NEW). 1991, c. 305, §1 (AMD). 1991, c. 305, §3 (AFF).

## §252. EDUCATION AND TRAINING

Every employer shall establish an education and training program for all operators as provided in this section. [1989, c. 512, (NEW).]

**1**. **Requirements.** An employer's education and training program must be provided both orally and in writing, except that an employer that uses fewer than 5 terminals at one location may provide the education and training program in writing only. The program must include, at a minimum:

A. Notification of the rights and duties created under this subchapter by posting in a prominent location in the workplace a copy of this subchapter and a written notice that explains these rights and duties in plain language; [1989, c. 512, (NEW).]

B. An explanation or description of the proper use of terminals and the protective measures that the operator may take to avoid or minimize symptoms or conditions that may result from extended or improper use of terminals; and [1989, c. 512, (NEW).]

C. Instruction related to the importance of maintaining proper posture during terminal operation and a description of methods to achieve and maintain this posture, including the use of any adjustable work station equipment used by the operator. [1989, c. 512, (NEW).]

[ 1991, c. 305, §2 (AMD); 1991, c. 305, §3 (AFF) .]

**2**. **Literature; clearinghouse.** The bureau shall recommend to employers, for use in education and training programs, occupational safety literature that provides appropriate, current and pertinent data on terminal use. The bureau shall also serve as a clearinghouse for information regarding workplace safety and health relative to the use of terminals.

[ 1989, c. 512, (NEW) .]

**3**. **Training schedule.** Employers shall provide current operators with this education and training program within 6 months after the effective date of this section and annually thereafter. Beginning 6 months after the effective date of this section, employers shall provide all new operators with the education and training program within the first month of employment as operators.

[ 1989, c. 512, (NEW) .]

SECTION HISTORY
1989, c. 512, (NEW). 1991, c. 305, §2 (AMD). 1991, c. 305, §3 (AFF).

# Subchapter 3: COMPRESSED AIR WORK

## Article 1: GENERAL PROVISIONS

## §271. DEFINITIONS

***(REPEALED)***

SECTION HISTORY

1971, c. 620, §13 (AMD). 1981, c. 15, §1 (RP).

## §272. APPLICABLE SECTIONS OF LABOR LAW POSTED

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1981, c. 15, §1 (RP).

## §273. REGULATIONS SUSPENDED OR MODIFIED

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1977, c. 694, §454 (AMD). 1981, c. 15, §1 (RP).

## §274. PENALTIES

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1981, c. 15, §1 (RP).

# Article 2: SUPERVISION AND CONTROL

## §301. RULES AND REGULATIONS

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

## §302. NOTICE TO BUREAU

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1981, c. 15, §1 (RP).

## §303. REPRESENTATIVE OF EMPLOYER TO BE PRESENT AT WORK

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

## §304. DAILY INSPECTION OF ALL APPARATUS

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

## §305. DAILY INSPECTION REPORT TO BUREAU

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1981, c. 15, §1 (RP).

## §306. FIRE PREVENTION

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1981, c. 15, §1 (RP).

## §307. RECORDS TO BE KEPT

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

# Article 3: OPERATING CONDITIONS

## §331. TEMPERATURE, LIGHTING AND SANITATION

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

## §332. COMPRESSION PLANTS

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

## §333. AIR SUPPLY; COMMUNICATIONS

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

## §334. SHAFTS; LOCKS

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

## §335. TRAVEL ON INCLINES OR SHAFT

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

## §336. CAISSONS BRACED

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

## §337. MEDICAL REGULATIONS

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1981, c. 15, §1 (RP).

## §338. EXPLOSIVES

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1981, c. 15, §1 (RP).

## §339. SIGNAL CODES

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

## §340. PRESSURE, SHIFTS AND INTERVALS

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

## §341. DECOMPRESSION

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

## §342. -- LOCK

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

## §343. RECORDING GAUGE

***(REPEALED)***

SECTION HISTORY
1981, c. 15, §1 (RP).

# Subchapter 3-A: SANITATION ON RAILROAD PROPERTY

## §351. RULES

The Commissioner of Labor shall adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, relating to sanitation on railroad property as it affects the safety and health of railroad employees, including, but not limited to, enginemen, trainmen, yardmen, maintenance-of-way employees, clerical employees, carmen and enginehouse employees. [1987, c. 594, §1 (NEW).]

SECTION HISTORY
1987, c. 594, §1 (NEW).

## §352. SCOPE

This subchapter applies to locomotives and caboose cars and other rolling stock, including camp cars and any other work area in which sanitation is not governed by a federal agency or another state agency. It does not apply to locomotives used only in yard switching service. [1987, c. 594, §1 (NEW).]

SECTION HISTORY
1987, c. 594, §1 (NEW).

## §353. INSPECTIONS

For the purposes of this subchapter, the Commissioner of Labor or the commissioner's designee may, at any reasonable time and upon presentation of appropriate identification, enter and inspect a workplace. [1987, c. 594, §1 (NEW).]

SECTION HISTORY
1987, c. 594, §1 (NEW).

## §354. PROHIBITION; PENALTY

A person who violates any rule that is adopted by the commissioner under this subchapter shall be subject to a civil forfeiture not to exceed $1,000 for each violation. Each day of violation shall constitute a separate violation. [1987, c. 594, §1 (NEW).]

SECTION HISTORY
1987, c. 594, §1 (NEW).

# Subchapter 4: CONSTRUCTION SAFETY RULES AND REGULATIONS

## §371. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
1971, c. 302, (AMD). 1971, c. 620, §13 (AMD). 1975, c. 519, §11 (RP).

## §372. ESTABLISHMENT OF BOARD; PURPOSE

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1975, c. 519, §11 (RP).

## §373. POWERS AND DUTIES OF BOARD

***(REPEALED)***

SECTION HISTORY
1975, c. 519, §11 (RP).

## §373-A. ENFORCEMENT GENERALLY

***(REPEALED)***

SECTION HISTORY
1971, c. 446, §2 (NEW). 1971, c. 620, §13 (AMD). 1975, c. 519, §11 (RP).

## §374. APPEALS

***(REPEALED)***

SECTION HISTORY
1971, c. 446, §3 (RPR). 1971, c. 620, §13 (AMD). 1975, c. 519, §11 (RP).

# Subchapter 5: ELEVATOR OPERATORS

## Article 1: GENERAL PROVISIONS

## §401. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
1965, c. 82, (AMD). 1967, c. 208, (AMD). 1971, c. 110, §§1-3 (AMD). 1977, c. 543, §3 (RP).

## §402. RETROACTIVE EFFECT

***(REPEALED)***

SECTION HISTORY
1971, c. 44, (AMD). 1977, c. 543, §3 (RP).

## §403. APPEALS

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1977, c. 543, §3 (RP).

## Article 2: ADMINISTRATION AND OPERATION

## §431. BOARD OF ELEVATOR RULES AND REGULATIONS

***(REPEALED)***

SECTION HISTORY
1971, c. 592, §16 (AMD). 1971, c. 620, §13 (AMD). 1973, c. 47, §§1-3 (AMD). 1973, c. 788, §118 (AMD). 1975, c. 771, §§273-275 (AMD). 1977, c. 543, §3 (RP).

## §432. POWERS AND DUTIES OF BOARD

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §3 (RP).

## §433. APPOINTMENT OF INSPECTORS

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1975, c. 771, §276 (AMD). 1977, c. 543, §3 (RP).

## §434. EXAMINATION OF INSPECTORS; FEES

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1977, c. 543, §3 (RP).

## §435. CERTIFICATES OF AUTHORITY

***(REPEALED)***

SECTION HISTORY
1971, c. 14, (AMD). 1977, c. 543, §3 (RP).

## §436. NOTICE TO COMMISSIONER OF ACCIDENTS

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §3 (RP).

## §437. EXAMINATION OF ACCIDENTS BY DIRECTOR

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1977, c. 543, §3 (RP).

## §438. EMPLOYMENT OF MINORS

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §3 (RP).

## §439. ELEVATOR MECHANICS; LICENSE; DEFINITION

***(REPEALED)***

SECTION HISTORY
1967, c. 312, §1 (NEW). 1977, c. 543, §3 (RP).

## §440. ISSUANCE; QUALIFICATIONS

***(REPEALED)***

SECTION HISTORY
1967, c. 312, §1 (NEW). 1971, c. 620, §13 (AMD). 1975, c. 286, (AMD). 1977, c. 543, §3 (RP).

## §441. EXAMINATION; APPLICATIONS; FEES

***(REPEALED)***

SECTION HISTORY
1967, c. 312, §1 (NEW). 1971, c. 620, §13 (AMD). 1977, c. 543, §3 (RP).

## §442. PENALTY

***(REPEALED)***

SECTION HISTORY
1967, c. 312, §1 (NEW). 1977, c. 543, §3 (RP).

# Article 3: INSPECTIONS

## §461. INSPECTION OF ELEVATORS

***(REPEALED)***

SECTION HISTORY
1965, c. 313, §1 (AMD). 1971, c. 110, §4 (AMD). 1971, c. 179, §F2 (AMD). 1977, c. 89, §1 (AMD). 1977, c. 543, §3 (RP).

## §462. CONDEMNED CONVEYANCES NOT TO BE OPERATED

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §3 (RP).

## §463. CERTIFICATE REQUIRED

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §3 (RP).

## §464. INSTALLATION OF NEW ELEVATORS; FEES

***(REPEALED)***

SECTION HISTORY
1965, c. 313, §2 (AMD). 1969, c. 100, (AMD). 1973, c. 683, (AMD). 1977, c. 89, §2 (AMD). 1977, c. 543, §3 (RP).

## §465. INSURANCE

***(REPEALED)***

SECTION HISTORY

1977, c. 543, §3 (RP).

## §466. REPORTS BY STATE AND AUTHORIZED ELEVATOR INSPECTORS

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §3 (RP).

## §467. POWERS OF DIRECTOR AND SUPERVISING INSPECTOR

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1977, c. 543, §3 (RP).

# Subchapter 5-A: ELEVATORS AND TRAMWAYS

## §471. DECLARATION OF POLICY

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §472. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1981, c. 168, §26 (AMD). 1981, c. 564, §1 (AMD). 1983, c. 119, §1 (AMD). 1985, c. 246, §1 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §473. RETROACTIVE EFFECT

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §474. APPEALS

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1977, c. 694, §455 (RPR). 1985, c. 310, (AMD). 1989, c. 483, §A41 (AMD). 1989, c. 590, §5 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §475. BOARD OF ELEVATOR AND TRAMWAY SAFETY

***(REPEALED)***

SECTION HISTORY

1977, c. 543, §4 (NEW). 1981, c. 168, §26 (AMD). 1983, c. 812, §157 (AMD). 1985, c. 246, §2 (AMD). 1989, c. 410, §26 (AMD). 1993, c. 708, §J8 (AMD). 1995, c. 560, §F14 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §476. POWERS AND DUTIES OF BOARD

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1977, c. 694, §456 (AMD). 1995, c. 354, §1 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §477. APPOINTMENT OF STATE INSPECTORS

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §478. EXAMINATION OF ELEVATOR INSPECTORS

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1995, c. 354, §2 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §479. LICENSED TRAMWAY INSPECTOR

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1989, c. 590, §6 (AMD). 1995, c. 354, §3 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §480. REVOCATION OF TRAMWAY OR ELEVATOR INSPECTOR'S LICENSE

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1977, c. 694, §457 (AMD). 1995, c. 354, §4 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §481. NOTICE TO DIRECTOR OF ACCIDENTS

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1977, c. 694, §458 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §482. EXAMINATION OF ACCIDENTS BY THE DIRECTOR

***(REPEALED)***

SECTION HISTORY

1977, c. 543, §4 (NEW). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §483. EMPLOYMENT OF MINORS

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1981, c. 564, §2 (RP).

## §484. ELEVATOR MECHANICS; LICENSE; DEFINITION

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1981, c. 564, §3 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §485. ISSUANCE; QUALIFICATIONS

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §485-A. INSPECTOR ENDORSEMENT TO ELEVATOR MECHANIC'S LICENSE

***(REPEALED)***

SECTION HISTORY
1995, c. 354, §5 (NEW). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §486. EXAMINATION; APPLICATIONS; FEES

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1989, c. 590, §7 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §487. PENALTY

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §488. SKIERS' AND TRAMWAY PASSENGERS' RESPONSIBILITIES

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1977, c. 608, §2 (AMD). 1979, c. 514, §3 (AMD). 1995, c. 472, §1 (RPR). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §489. DUTIES OF SKIERS AND TRAMWAY PASSENGERS; ACTS PROHIBITED

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1979, c. 514, §§4,5 (AMD). 1983, c. 119, §§2-4 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §489-A. HANG-GLIDING

***(REPEALED)***

SECTION HISTORY
1979, c. 514, §6 (NEW). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §490. PENALTIES

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1983, c. 119, §5 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §490-A. INSPECTION OF ELEVATORS AND TRAMWAYS

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1977, c. 694, §459 (AMD). 1981, c. 564, §§4,5 (AMD). 1989, c. 590, §8 (AMD). 1995, c. 354, §6 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §490-B. CONDEMNED CONVEYANCES NOT TO BE OPERATED

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §490-C. CERTIFICATE REQUIRED

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §490-D. INSTALLATION OF NEW ELEVATORS AND TRAMWAYS; FEES

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1981, c. 564, §6 (AMD). 1989, c. 590, §9 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §490-E. INSPECTION FEES

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1981, c. 564, §7 (AMD). 1989, c. 590, §10 (AMD). 1995, c. 354, §7 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §490-F. REPORTS BY INSPECTORS

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1995, c. 354, §8 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

## §490-G. POWERS OF DIRECTOR AND SUPERVISING INSPECTOR

***(REPEALED)***

SECTION HISTORY
1977, c. 543, §4 (NEW). 1977, c. 694, §460 (AMD). 1989, c. 483, §A42 (AMD). 1995, c. 560, §H17 (AFF). 1995, c. 560, §H9 (RP).

# Subchapter 6: PACKING OF FISH AND FISH PRODUCTS

# Article 1: GENERAL PROVISIONS

## §491. LEGISLATIVE FINDING

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

## §492. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

## §493. EMPLOYERS' RECORDS

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

## §494. CIVIL ACTIONS BY EMPLOYEES

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

## §495. PENALTIES

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

# Article 2: ADMINISTRATION AND OPERATION

## §521. EMPLOYMENT OF WOMEN AND MINORS

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

## §522. POWERS OF COMMISSIONER AND INSPECTOR

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

## §523. INVESTIGATIONS

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

## §524. COMPLIANCE BY EMPLOYERS

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

## §525. COURT PROCEEDINGS

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

# Article 3: WAGE BOARDS

## §551. MEMBERSHIP

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

## §552. POWERS

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

## §553. ASSISTANCE OF COMMISSIONER

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

## §554. REPORTS

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

## §555. -- PUBLICATION AND SERVICE

***(REPEALED)***

SECTION HISTORY
1965, c. 176, (RP).

# Chapter 6: OCCUPATIONAL SAFETY RULES AND REGULATIONS BOARD

## Subchapter 1: GENERAL PROVISIONS

### §561. DECLARATION OF POLICY

***(REPEALED)***

SECTION HISTORY
1969, c. 454, (NEW). 2013, c. 473, §4 (RP).

### §561-A. GENERAL DUTIES

**1**. **Employer duties.** An employer has the following duties.

A. An employer shall furnish to each employee employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employee. [2013, c. 473, §5 (NEW).]

B. An employer shall comply with occupational safety and health rules adopted under this chapter. [2013, c. 473, §5 (NEW).]

[ 2013, c. 473, §5 (NEW) .]

**2**. **Employee duties.** An employee shall comply with occupational safety and health rules and all rules adopted under this chapter that are applicable to the employee's own actions and conduct.

[ 2013, c. 473, §5 (NEW) .]

SECTION HISTORY
2013, c. 473, §5 (NEW).

### §562. COVERAGE

***(REPEALED)***

SECTION HISTORY
1969, c. 454, (NEW). 1975, c. 519, §12 (RP).

### §563. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings. [1975, c. 519, §13 (RPR).]

**1**. **Approved.** "Approved" means as approved by the Board of Occupational Safety and Health.

[ 1975, c. 519, §13 (RPR) .]

**2**. **Board.** "Board" means the Board of Occupational Safety and Health.

[ 1975, c. 519, §13 (RPR) .]

**3**. **Bureau.** "Bureau" means the Bureau of Labor Standards.

[ 1989, c. 502, Pt. C, §9 (AMD) .]

**4**. **Director.** "Director" means the Director of the Bureau of Labor Standards.

[ 1989, c. 502, Pt. C, §10 (AMD) .]

**5**. **Employ.** "Employ" means employ, suffer or permit to work.

[ 1975, c. 519, §13 (RPR) .]

**6**. **Employee.** "Employee" means any person, including a minor whether lawfully or unlawfully employed, who is employed or permitted to work by the State, a state agency, county, municipal corporation, school district or other public corporation or political subdivision.

[ 1975, c. 519, §13 (RPR) .]

**7**. **Employer.** "Employer" shall mean the State, state agency, county, municipal corporation, school district or other political corporation or political subdivisions having employees.

[ 1979, c. 197, §2 (NEW) .]

SECTION HISTORY
1969, c. 454, (NEW). 1971, c. 620, §13 (AMD). 1975, c. 519, §13 (RPR). 1975, c. 717, §§2,3 (AMD). 1979, c. 197, §2 (AMD). 1989, c. 502, §§C9,C10 (AMD).

## §564. ESTABLISHMENT OF BOARD; PURPOSE

The Board of Occupational Safety and Health as established by Title 5, section 12004-G, subsection 24, shall consist of 10 members of which 9 shall be appointed by the Governor. Of the 9 appointed members of the board, 3 shall represent employers; 3 shall represent employees; one shall represent an insurance company licensed to insure workers' compensation within the State and 2 shall represent the public. The 10th member of the board shall be the director. Of the 3 employer members, one shall represent state agencies, one shall represent counties within the State and one shall represent municipalities within the State. Of the 3 employee members, one shall represent state employees, one shall represent county employees and one shall represent municipal employees. [1989, c. 502, Pt. A, §105 (AMD).]

The term of office for the appointed members shall be 4 years. In the first appointment, 3 shall be appointed for a term of 2 years, 3 shall be appointed for a term of 3 years and 3 shall be appointed for a term of 4 years. The chairman shall be elected biennially by the members of the board. Each member shall hold office until his successor is duly appointed and qualified. [1975, c. 519, §14 (AMD).]

In case of a vacancy in board membership, the Governor shall appoint a member of the proper classification to fill the unexpired term of the absent member. [1975, c. 771, §278 (AMD).]

The board shall meet at least twice yearly at the seat of government or any other place designated by the chair. [1989, c. 410, §27 (AMD).]

The 9 appointed members of the board shall be compensated according to the provisions of Title 5, chapter 379. The chairman of the board shall approve and countersign all vouchers for expenditures under this section. [1983, c. 812, §159 (AMD).]

SECTION HISTORY
1969, c. 454, (NEW). 1971, c. 620, §13 (AMD). 1975, c. 59, §3 (AMD). 1975, c. 519, §14 (AMD). 1975, c. 771, §§277,278 (AMD). 1983, c. 812, §§158,159 (AMD). 1989, c. 410, §27 (AMD). 1989, c. 502, §A105 (AMD).

## §565. POWERS AND DUTIES OF BOARD

The board shall formulate and adopt reasonable rules, pursuant to Title 5, chapter 375, subchapter II, for safe and healthful working conditions, including rules requiring the use of personal protective equipment, monitoring and record keeping. The rules so formulated shall at a minimum conform to federal standards of occupational safety and health, so that the state program can be federally approved as a public employee only occupational safety and health program. These rules shall not become effective sooner than 90 days after the date of adoption and promulgation. [1989, c. 712, (AMD).]

SECTION HISTORY
1969, c. 454, (NEW). 1975, c. 519, §15 (AMD). 1977, c. 694, §461 (AMD). 1989, c. 712, (AMD).

## §565-A. AIR QUALITY AND VENTILATION; EVALUATION OF BUILDINGS; STANDARDS

**1**. **Advise and propose standards.** The board shall work with the Bureau of General Services with respect to evaluation of indoor air quality and ventilation in public school buildings and buildings occupied by state employees and the preparation of the report pursuant to Title 5, section 1742, subsection 24, paragraph A.

A. The board may advise the Bureau of General Services and propose for consideration by the bureau air quality and ventilation standards that are more stringent than the minimum standards as defined in Title 5, section 1742, subsection 24. [2011, c. 691, Pt. B, §25 (AMD).]

[ 2011, c. 691, Pt. B, §25 (AMD) .]

SECTION HISTORY
1987, c. 733, §6 (NEW). 1991, c. 181, §3 (AMD). 2011, c. 691, Pt. B, §25 (AMD).

## §565-B. SAFETY AND HEALTH OF STUDENTS IN PUBLIC EDUCATIONAL FACILITIES

The board shall formulate and adopt reasonable rules to ensure safe and healthful conditions for students in public educational facilities. The rules must address safety and health hazards created by the use of or exposure to equipment or material or the exposure to other conditions within the educational facility that minors would be prohibited from using or being exposed to in a work environment. The rules may include, but are not limited to, regulations of equipment, material and conditions found in vocational or technical education, scientific laboratories and shop class. [2001, c. 397, §1 (NEW).]

The bureau shall enforce rules adopted under this section. The bureau may provide the same technical assistance to the governing boards of public educational facilities as it provides to employers pursuant to section 42-A and any other provision of this Title. Public educational facilities are subject to the same rights of access and the governing boards of such facilities are subject to the same penalties as employers pursuant to chapter 3. [2001, c. 397, §1 (NEW).]

Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 397, §1 (NEW).]

SECTION HISTORY
2001, c. 397, §1 (NEW).

## §566. ENFORCEMENT

The bureau shall inspect and enforce the rules and regulations. [1971, c. 620, §13 (AMD).]

SECTION HISTORY
1969, c. 454, (NEW). 1971, c. 620, §13 (AMD).

## §567. ENFORCEMENT GENERALLY

***(REPEALED)***

SECTION HISTORY
1969, c. 454, (NEW). 1971, c. 446, §4 (AMD). 1971, c. 620, §13 (AMD). 1975, c. 519, §16 (RP).

## §568. APPEALS

Any person aggrieved by an order or act of the director or of an inspector of the bureau or wishing to contest any citation or penalty issued under sections 45 and 46 may, within 15 working days after notice thereof, appeal from the order, act, citation or penalty to the board, which shall hold a hearing pursuant to Title 5, section 9051 et seq., and the board shall, after the hearing, issue an appropriate order either approving, disapproving or modifying the order, act, citation or penalty. [1977, c. 694, §462 (RPR).]

Any such order of the board or any rule or regulation formulated by the board shall be subject to review by the Superior Court, pursuant to Title 5, section 8058 or section 11001 et seq. [1977, c. 694, §462 (RPR).]

SECTION HISTORY
1969, c. 454, (NEW). 1971, c. 620, §13 (AMD). 1975, c. 519, §17 (AMD). 1977, c. 694, §462 (RPR).

## §569. RULES

The rules of the bureau must, at a minimum, conform to the standards of the federal Occupational Safety and Health Administration. If a rule adopted by the bureau conflicts with the rule of another state agency with regard to occupational safety and health standards, including conflicts of rules regarding employee health exposure, the bureau rule supersedes the other state agency rule. [2013, c. 473, §6 (NEW).]

SECTION HISTORY
1969, c. 454, (NEW). 1969, c. 554, §2 (AMD). 1975, c. 293, §4 (AMD). 1977, c. 78, §163 (AMD). 1977, c. 694, §463 (AMD). 1979, c. 127, §158 (RPR). 1979, c. 541, §A169 (AMD). 1995, c. 560, §H10 (AMD). 1995, c. 560, §H17 (AFF). 2003, c. 689, §B6 (REV). 2013, c. 70, Pt. B, §4 (AMD). 2013, c. 473, §6 (RPR).

## §570. DISCRIMINATION

A person may not discharge or in any manner discriminate against an employee because that employee has filed any complaint concerning an alleged occupational safety or health hazard or has testified or is about to testify in any proceeding relating to employee safety and health or because of the exercise by the employee on behalf of the employee or others of any right under this chapter. [2013, c. 473, §7 (AMD).]

Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of this section may, within 30 days after the alleged violation occurs, file a complaint with the director, alleging discrimination. Upon receipt of the complaint, the director shall conduct an investigation as the director determines is appropriate. If upon investigation the director determines that the provisions of this chapter have been violated, the director shall bring an action in the Superior Court in the

county in which the alleged violation occurred. In any action, the Superior Court has jurisdiction, for cause shown, to restrain violations of this section and order all appropriate relief, including rehiring or reinstatement of the employee to the employee's former position with back pay. [2013, c. 473, §7 (AMD).]

Within 90 days of the receipt of a complaint filed under this section, the director shall notify the complainant of the director's determination. [2013, c. 473, §7 (AMD).]

SECTION HISTORY
1979, c. 95, §3 (NEW). 2013, c. 473, §7 (AMD).

## §571. VARIANCE

Any affected employer may apply to the director for order for a variance from a standard promulgated under this chapter. Affected employees shall be given notice of each application and an opportunity to participate in a hearing. The director shall issue the order if he determines on the record, after a hearing and, where appropriate, an inspection, that the proponent of a variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of his employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. Such an order may be summarily revoked by the director on his own motion or modified or revoked by the director upon application by an employer or employee in the manner prescribed for its issuance. [1981, c. 15, §2 (NEW).]

Any person aggrieved by an order of the director may appeal, at any time, from the order to the board under the process established in section 568. [1981, c. 15, §2 (NEW).]

SECTION HISTORY
1981, c. 15, §2 (NEW).

# Subchapter 2: OCCUPATIONAL SAFETY AND HEALTH OF FARM WORKERS

## §580. STANDARDS

It is declared the public policy of the State of Maine that all workers engaged in agricultural labor in the State shall be protected from hazards to their safety or health and that working conditions shall be maintained that will be reasonably free of hazards to their safety and health. [1971, c. 446, §5 (NEW).]

SECTION HISTORY
1971, c. 446, §5 (NEW).

## §581. ADMINISTRATION AND ENFORCEMENT

To implement section 580 in workplaces provided by the State, state agency, county, municipal corporation, school district or other public corporation or political subdivision, the Occupational Safety Rules and Regulations Board shall formulate and adopt pursuant to Title 5, section 8051 et seq., reasonable rules and regulations pursuant to this chapter and the bureau shall inspect and enforce the rules and regulations. The Commissioner of Agriculture, Conservation and Forestry shall have the authority to adopt, pursuant to Title 5, section 8051 et seq., administer and enforce standards, rules and regulations to implement section 580 in all other workplaces. [1981, c. 15, §3 (RPR); 2011, c. 657, Pt. W, §6 (REV).]

SECTION HISTORY
1971, c. 446, §5 (NEW). 1977, c. 694, §464 (AMD). 1981, c. 15, §3 (RPR). 2011, c. 657, Pt. W, §6 (REV).

# Subchapter 3: HOUSING STANDARDS FOR AGRICULTURAL LABOR HEADING: PL 1997, C. 387, §2 (NEW)

## §585. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 387, §2 (NEW).]

**1**. **Agricultural labor.** "Agricultural labor" means agricultural labor as defined in the Employment Security Law, chapter 13.

[ 1997, c. 387, §2 (NEW) .]

**2**. **Owner.** An agricultural employer is an "owner" of a housing facility or real property if that employer has a legal or equitable interest in the housing facility or real property.

[ 1997, c. 387, §2 (NEW) .]

**3**. **Control.** An agricultural employer is in "control" of a housing facility or real property, regardless of the location of that facility, if the employer is in charge of or has the power or authority to oversee, manage, superintend or administer the housing facility or real property either personally or through an authorized agent or employee, irrespective of whether compensation is paid for engaging in any of those capacities.

[ 1997, c. 387, §2 (NEW) .]

**4**. **Facility.** "Facility" means a structure, trailer or vehicle, or 2 or more contiguous or grouped structures, trailers or vehicles, together with the land appurtenant.

[ 1997, c. 387, §2 (NEW) .]

SECTION HISTORY
1997, c. 387, §2 (NEW).

## §586. AGRICULTURAL LABOR HOUSING STANDARDS

The bureau shall adopt rules for the protection of the health, safety and welfare of the agricultural laborers and their families who occupy housing provided, owned or controlled by their employers. These rules apply only to housing facilities of employers of agricultural labor who provide housing to more than 5 employees and whose minimum housing habitability standards are not already established under the regulations on housing promulgated by the United States Department of Labor, Occupational Safety and Health Administration under the federal Migrant and Seasonal Agricultural Worker Protection Act, 29 United States Code, Sections 1801 et seq. The rules adopted under this subchapter must be identical to the federal housing habitability regulations promulgated to protect seasonal and migrant workers under the authority of the federal Migrant and Seasonal Agricultural Worker Protection Act. Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 387, §2 (NEW).]

SECTION HISTORY
1997, c. 387, §2 (NEW).

## §587. INSPECTIONS

The bureau may inspect housing facilities subject to this subchapter in accordance with this section. [1997, c. 387, §2 (NEW).]

**1**. **Right of entry.** Without an administrative inspection warrant, any duly designated officer of the bureau may enter a housing facility subject to this chapter at any reasonable time in order to determine compliance with this chapter and any rules in force pursuant to this chapter. No such entry and inspection may

be made without the permission of one or more occupants of the facility unless a search warrant is obtained authorizing entry and inspection. If the housing facility is unoccupied, permission of the owner is required before entry and inspection unless a search warrant is obtained.

[ 1997, c. 387, §2 (NEW) .]

**2**. **Technical assistance.** Upon the written request of the bureau, the Department of Health and Human Services, Division of Health Engineering shall provide any technical services that may be required by the bureau to assist with inspections and enforcement of this subchapter.

[ 1997, c. 387, §2 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

**3**. **Municipal inspections.** The bureau may rely on inspections performed by the municipality only to the extent that the municipality has adopted a rule, regulation, ordinance or other code of standard that is at least as stringent as the bureau's rule on that subject. The bureau may rely on municipal inspections only if the inspector is properly licensed or certified by the State to make such inspections.

[ 1997, c. 387, §2 (NEW) .]

SECTION HISTORY
1997, c. 387, §2 (NEW). 2003, c. 689, §B6 (REV).

## §588. PENALTIES AND ENFORCEMENT

Actions to enforce this subchapter may be brought in accordance with this section. [1997, c. 387, §2 (NEW).]

**1**. **Civil violation.** An employer who violates this subchapter or the rules adopted under this subchapter commits a civil violation for which a forfeiture of not less than $100 nor more than $1,000 for each violation, payable to the State, may be adjudged. Each day that the violation remains uncorrected following notice to the employer may be counted as a separate offense. The bureau may direct an employer to correct any violations in a manner and within a time frame that the bureau determines appropriate to ensure compliance with the rules or to protect the public health. Failure to correct violations within a time frame established by the bureau constitutes a separate finable offense. In the event of any violation of this subchapter, the Attorney General may seek to enjoin further violation, in addition to any other remedy.

[ 1997, c. 387, §2 (NEW) .]

**2**. **Private right of action.** A civil action may be brought against an employer of agricultural labor by any person aggrieved by a violation of this chapter or rules adopted under this subchapter. If the court finds that the employer violated this subchapter or a rule adopted under this subchapter, it may award damages of not less than $100 nor more than $500 per plaintiff per violation, except that multiple infractions of a single rule under this subchapter constitute only one violation for the purposes of determining the amount of damages due a single plaintiff. In determining the amount of damages to be awarded, the court is authorized to consider whether an attempt was made to resolve the issues in dispute before resort to litigation.

[ 1997, c. 387, §2 (NEW) .]

SECTION HISTORY
1997, c. 387, §2 (NEW).

## §589. EXEMPTION

This subchapter does not apply to a person who, in the ordinary course of that person's business, regularly provides housing to the general public on a commercial basis and who provides to any agricultural laborer similar housing on the same or comparable terms and conditions as provided to the general public. Agricultural labor housing may not be brought within this exception simply by offering lodging to the general public. [1997, c. 387, §2 (NEW).]

SECTION HISTORY
1997, c. 387, §2 (NEW).

# Chapter 7: EMPLOYMENT PRACTICES

## Subchapter 1: CONDITIONS FOR EMPLOYMENT

### §591. EXAMINATION; DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings: [1985, c. 112, §1 (AMD).]

**1**. **Employee.** "Employee" means every person who may be permitted, required or directed by any employer in consideration of direct or indirect gain or profit, to engage in any employment;

[ 1985, c. 112, §1 (AMD) .]

**2**. **Employer.** "Employer" means an individual, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy and any common carrier by rail, motor, water, air or express company doing business in or operating within the State; and

[ 2011, c. 643, §3 (AMD); 2011, c. 643, §14 (AFF) .]

**3**. **Independent contractor.** "Independent contractor" means an individual who qualifies as an independent contractor under section 1043, subsection 11, paragraph E.

[ 2011, c. 643, §4 (NEW); 2011, c. 643, §14 (AFF) .]

SECTION HISTORY
1985, c. 112, §1 (AMD). 2011, c. 643, §§3, 4 (AMD). 2011, c. 643, §14 (AFF).

### §591-A. EMPLOYEE MISCLASSIFICATION

An employer that intentionally or knowingly misclassifies an employee as an independent contractor commits a civil violation for which a fine of not less than $2,000 and not more than $10,000 per violation may be adjudged. [2011, c. 643, §5 (NEW); 2011, c. 643, §14 (AFF).]

A determination of misclassification of a worker as an independent contractor may result in the assessment of penalties under section 1051, 1082 or 1225 or Title 39-A, section 105-A or 324. [2011, c. 643, §5 (NEW); 2011, c. 643, §14 (AFF).]

SECTION HISTORY
2011, c. 643, §5 (NEW). 2011, c. 643, §14 (AFF).

### §592. CHARGE BY EMPLOYER PROHIBITED

No employer may require any employee or accepted applicant for employment to bear the medical expense of an examination when that examination is ordered or required by the employer. No employer may require any employee or accepted applicant for employment to bear the expense of an eye examination ordered or required by the employer that is performed by a person licensed to perform the examinations, except that if an employer orders or requires the eye examination to be performed by a specific type of eye care provider, or specific provider, the employer must pay for the examination only when performed by that specific type of eye care provider or specific provider. An employer may pay for an examination under this section directly or through group health insurance coverage of the employee or may pay in another manner, as long as the employee is not required to bear the expense of that examination, including but not limited to any copayments or other out-of-pocket expenses. Any employer who violates this section commits a civil violation for which a forfeiture not to exceed $50 for each and every violation may be adjudged. It is the duty

of the director to enforce this section. Notwithstanding section 591, subsection 2, for the purposes of this section, the term "employer" includes the State, a county, a municipality, a quasi-municipal corporation or any other public employer. For the purposes of this section, the term "accepted applicant" means an applicant who has been offered a job by the employer. [2013, c. 363, §1 (AMD).]

SECTION HISTORY
1971, c. 620, §13 (AMD). 1985, c. 112, §2 (AMD). 1989, c. 535, (AMD). 2013, c. 363, §1 (AMD).

## §593. TEXTILE PIECEWORK

**1**. **Posting of specifications.** The occupiers or managers of every textile factory shall post in every room where employees work by piece rate, in legible writing or printing, and in sufficient numbers to be easily accessible to such employees, specifications of the character of each kind of work to be done by them and the rate of compensation, whether paid by the pound or by the pick as registered by the pick clock on each loom. Such specifications in the case of weaving rooms must state the intended and maximum length of a cut or piece, the count per inch of reed and the number of picks per inch, width of loom and width of cloth woven in the loom, and each warp must bear a designating ticket or mark of identification.

[ 2003, c. 452, Pt. O, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**2**. **Pick clocks.** In mills operating looms engaged in the weaving of cloth or other textiles where weavers are not paid on a per hour or day basis, pick clocks must be placed on each loom in operation, and each weaver must be paid according to the number of picks registered on the pick clock.

[ 2003, c. 452, Pt. O, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**3**. **Penalties.** The following penalties apply to violations of this section.

A. A person who violates this section commits a civil violation for which a fine of not more than $50 may be adjudged. [2003, c. 452, Pt. O, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who violates this section after having previously violated this section commits a civil violation for which a fine of not more than $100 may be adjudged. [2003, c. 452, Pt. O, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. A person who violates this section after having previously violated this section 2 or more times commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. O, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2003, c. 452, Pt. O, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**4**. **Application.** This section does not apply to so-called gang looms or the weaving of carpets or elastic webbing.

[ 2003, c. 452, Pt. O, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
2003, c. 452, §X2 (AFF). 2003, c. 452, §O1 (RPR).

## §594. CHARGE BY AN EMPLOYER FOR AN APPLICATION FOR EMPLOYMENT

It is unlawful for an employer to assess a fee or charge a prospective employee in any fashion for requesting, submitting, filing or completing an application for employment with that employer. Any employer who violates this section shall be liable to a penalty of not more than $500 for each violation. It is the duty of the director to enforce this section. [1983, c. 627, (NEW).]

SECTION HISTORY
1983, c. 627, (NEW).

## §595. HIRING OF WORKERS DURING A LABOR DISPUTE

**1**. **Legislative findings.** The Legislature finds that:

A. The practice of receiving applicants for employment, conducting interviews of job applicants or performing medical examinations of job applicants at the worksite of an employer who is currently engaged in a labor dispute with his employees tends to incite violence by bringing individuals who may be considered as replacements for workers to the physical focus of the labor dispute and by encouraging a direct confrontation between these individuals and the prior employees; and [1987, c. 558, §1 (NEW).]

B. The presence of persons carrying dangerous weapons near sites where applications for positions with an employer involved in a labor dispute are being accepted or where interviews of those job applicants are being conducted or medical examinations of those applicants are being performed creates an unacceptable risk of violence; and [1987, c. 558, §1 (NEW).]

C. The public safety requires the regulation of these practices to reduce the likelihood of violence. [1987, c. 558, §1 (NEW).]

[ 1987, c. 558, §1 (NEW) .]

**2**. **Purpose.** The purpose of this section is to reduce the potential for violence during labor disputes by prohibiting certain provocative acts and imposing penalties for failure to obey this section.

[ 1987, c. 558, §1 (NEW) .]

**3**. **Receiving job applicants at worksite prohibited.** No employer may perform any of the following acts at any of that employer's plants, facilities, places of business or worksites where a labor dispute, strike or lockout involving the employees of that employer is in progress:

A. Receiving persons for the purpose of soliciting or receiving applications for employment with the employer; [1987, c. 558, §1 (NEW).]

B. Conducting or having conducted interviews of applicants for employment with the employer; or [1987, c. 558, §1 (NEW).]

C. Performing or having performed medical examinations of applicants for employment with the employer. [1987, c. 558, §1 (NEW).]

Any employer who violates this subsection is subject to a civil penalty not to exceed $10,000 for each day the violation continues, payable to the State, to be recovered in a civil action. Upon request, any court of competent jurisdiction shall also enjoin the violation under section 5.

The Attorney General, the Commissioner of Labor or any employee, employees or bargaining agent of employees involved in the labor dispute may file a civil action to enforce this subsection.

[ 1987, c. 558, §1 (NEW) .]

**4**. **Hiring off-site permitted.** An employer involved in a labor dispute, strike or lockout may perform hiring activities prohibited under subsection 3 at any site other than his customary plants, facilities, places of business or worksites where a labor dispute, strike or lockout involving the employees of that employer is in progress.

A. The employer must notify the law enforcement agencies of the county and municipality in which these activities will be conducted at least 10 days before commencing hiring activities. [1987, c. 558, §1 (NEW).]

B. No employee of the employer conducting hiring activities under this subsection and who is involved in the labor dispute, strike or lockout may picket, congregate or in any way protest the hiring activity of the employer within 200 feet of the building or structure at which such activities are taking place. Violation of this paragraph is a Class E crime. [1987, c. 558, §1 (NEW).]

[ 1987, c. 558, §1 (NEW) .]

**5**. **Dangerous weapons prohibited.** It is a Class D crime for any person, including, but not limited to, security guards and persons involved in a labor dispute, strike or lockout, to be armed with a dangerous weapon, as defined in Title 17-A, section 2, subsection 9, at a site where applications for employment with an employer involved in a labor dispute, strike or lockout are being received or where interviews of those job applicants are being conducted or where medical examinations of those job applicants are being performed.

A. A person holding a valid permit to carry a concealed handgun is not exempt from this subsection. [2013, c. 424, Pt. A, §14 (AMD).]

B. A security guard is exempt from this subsection to the extent that federal laws or rules required the security guard to be armed with a dangerous weapon at such a site. [1987, c. 558, §1 (NEW).]

C. A public law enforcement officer is exempt from this subsection while on active duty in the public service. [1987, c. 558, §1 (NEW).]

D. A security guard employed by an employer involved in a labor dispute, strike or lockout may be present at the location where applications for employment with the employer will be accepted, interviews of those applicants conducted or medical examinations of those applicants performed to the extent permitted under Title 32, chapter 93. Nothing in this section may be construed to extend or limit in any way the restrictions placed upon the location of private security guards under Title 32, chapter 93. [1987, c. 558, §1 (NEW).]

[ 2013, c. 424, Pt. A, §14 (AMD) .]

SECTION HISTORY
1987, c. 558, §1 (NEW). 2013, c. 424, Pt. A, §14 (AMD).

## §596. RECALL PERIOD

An employee who is temporarily laid off by an employer for over 6 weeks and who is placed on a "recall" or "spare" list by that employer for the purpose of being recalled to work shall have 7 days from receiving notice of a recall to work in which to respond to the notice without discrimination on subsequent recalls by the employer. [1989, c. 460, (NEW).]

**1**. **Effect of exercising option.** No employer may remove an employee from a "recall" or "spare" list solely because the employee chooses to exercise the 7-day option under this section. No employer may discriminate against an employee in subsequent recalls to work solely because the employee chooses to exercise the 7-day option under this section.

[ 1989, c. 460, (NEW) .]

**2**. **Limitations.** Nothing in this section may be construed to:

A. Prevent an employer from offering recall to another employee on the "recall" or "spare" list in the place of an employee who is contacted earlier but who chooses to exercise the 7-day option under this section; [1989, c. 460, (NEW).]

B. Require an employer to hold a position or an offer of recall open for an employee who exercises the 7-day option under this section; or [1989, c. 460, (NEW).]

C. Require an employee to wait 7 days before returning to work after receiving a recall notice. [1989, c. 460, (NEW).]

[ 1989, c. 460, (NEW) .]

SECTION HISTORY
1989, c. 460, (NEW).

## §597. CONDITIONS OF EMPLOYMENT

An employer or an agent of an employer may not require, as a condition of employment, that any employee or prospective employee refrain from using tobacco products outside the course of that employment or otherwise discriminate against any person with respect to the person's compensation, terms, conditions or privileges of employment for using tobacco products outside the course of employment as long as the employee complies with any workplace policy concerning use of tobacco. [1991, c. 366, (NEW).]

SECTION HISTORY
1991, c. 366, (NEW).

## §598. EMPLOYMENT REFERENCE IMMUNITY

An employer who discloses information about a former employee's job performance or work record to a prospective employer is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from civil liability for such disclosure or its consequences. Clear and convincing evidence of lack of good faith means evidence that clearly shows the knowing disclosure, with malicious intent, of false or deliberately misleading information. This section is supplemental to and not in derogation of any claims available to the former employee that exist under state law and any protections that are already afforded employers under state law. [1995, c. 335, §1 (NEW).]

SECTION HISTORY
1995, c. 335, §1 (NEW).

## §599. BROADCASTING INDUSTRY CONTRACT

**1**. **Definition.** As used in this section, unless the context otherwise indicates, "broadcasting industry contract" means an employment contract between a person and a legal entity that owns one or more television stations or networks or one or more radio stations or networks.

[ 2003, c. 225, §1 (AMD) .]

**2**. **Presumed unreasonable.** A broadcasting industry contract provision that requires an employee or prospective employee to refrain from obtaining employment in a specified geographic area for a specified period of time following expiration of the contract or upon termination of employment without fault of the employee is presumed to be unreasonable.

[ 1999, c. 406, §1 (NEW) .]

SECTION HISTORY
1999, c. 406, §1 (NEW). 2003, c. 225, §1 (AMD).

## §600. CONCEALED FIREARMS IN VEHICLES

**1**. **Firearms in vehicles.** An employer or an agent of an employer may not prohibit an employee who has a valid permit to carry a concealed firearm under Title 25, chapter 252 from keeping a firearm in the employee's vehicle as long as the vehicle is locked and the firearm is not visible. This subsection applies to the State as an employer when a state employee's vehicle is on property owned or leased by the State. This subsection does not authorize an employee or state employee to carry a firearm in a place where carrying a firearm is prohibited by law. For purposes of this section, "state employee" means an employee of the State within the executive branch, the legislative branch or the judicial branch performing services within the scope of that employee's employment.

[ 2011, c. 537, §1 (AMD) .]

**2**. **Immunity from liability.** An employer or an agent of an employer may not be held liable in any civil action for damages, injury or death resulting from or arising out of another person's actions involving a firearm or ammunition transported or stored pursuant to this section, including, but not limited to, the theft of a firearm from an employee's vehicle, unless the employer or an agent of the employer intentionally solicited or procured the other person's injurious actions. Nothing in this section affects provisions in the Maine Workers' Compensation Act of 1992.

[ 2011, c. 393, §1 (NEW) .]

SECTION HISTORY
2011, c. 393, §1 (NEW). 2011, c. 537, §1 (AMD).

# Subchapter 1-A: HOURS OF EMPLOYMENT

## §601. REST BREAKS

In the absence of a collective bargaining agreement or other written employer-employee agreement providing otherwise, an employee, as defined in section 663, may be employed or permitted to work for no more than 6 consecutive hours at one time unless he is given the opportunity to take at least 30 consecutive minutes of rest time, except in cases of emergency in which there is danger to property, life, public safety or public health. This rest time may be used by the employee as a mealtime. [1985, c. 212, (NEW).]

**1**. **Small business.** This section does not apply to any place of employment where:

A. Fewer than 3 employees are on duty at any one time; and [1985, c. 212, (NEW).]

B. The nature of the work done by the employees allows them frequent breaks during their work day. [1985, c. 212, (NEW).]

[ 1985, c. 212, (NEW) .]

SECTION HISTORY
1985, c. 212, (NEW).

## §602. ENFORCEMENT AND PENALTY

The following provisions govern the enforcement of this subchapter. [1985, c. 212, (NEW).]

**1**. **Violation.** Any employer who violates this subchapter commits a civil violation for which a forfeiture of not less than $100 nor more than $500 for each violation may be adjudged.

[ 1985, c. 212, (NEW) .]

**2**. **Discharge or discrimination.** Any employer who discharges or in any other manner discriminates against any employee because the employee makes a complaint to the director, the district attorney or the Attorney General concerning a violation of this subchapter, commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

[ 1985, c. 212, (NEW) .]

**3**. **Injunction.** If any provision of this subchapter is violated, the Attorney General may seek an injunction in the Superior Court to enjoin any further violations or to compel the reinstatement of an employee discharged or discriminated against as described in subsection 2.

[ 1985, c. 212, (NEW) .]

SECTION HISTORY
1985, c. 212, (NEW).

## §603. LIMITS ON MANDATORY OVERTIME

**1**. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Employer" means all private and public employers, including the State and political subdivisions of the State. [1999, c. 750, §1 (NEW).]

B. "Overtime" means the hours worked in excess of 40 hours in a calendar week. [1999, c. 750, §1 (NEW).]

[ 1999, c. 750, §1 (NEW) .]

**2**. **Limits on mandatory overtime.** An employer may not require an employee to work more than 80 hours of overtime in any consecutive 2-week period.

[ 1999, c. 750, §1 (NEW) .]

**3**. **Exceptions.** This section does not apply to:

A. Work performed in response to an emergency declared by the Governor under the laws of the State; [1999, c. 750, §1 (NEW).]

B. An employee who performs essential services for the public. For purposes of this paragraph, "essential services" means those services that are basic or indispensable and are provided to the public as a whole, including, but not limited to, utility service, snowplowing, road maintenance and telecommunications service; [1999, c. 750, §1 (NEW).]

C. An employee whose work is necessary to protect the public health or safety, when the excess overtime is required outside the normal course of business; [1999, c. 750, §1 (NEW).]

D. An individual exempt from the definition of employee in section 663, subsection 3, paragraph A, C, F, G, I or J; [2007, c. 640, §1 (AMD).]

E. A salaried employee who works in a bona fide executive capacity and whose regular compensation, when converted to an annual rate, exceeds 3000 times the State's minimum hourly wage; [1999, c. 750, §1 (NEW).]

F. An employee of a seasonal employer. For purposes of this paragraph, "seasonal employer" means an employer in an industry that operates in a regularly recurring period or periods of less than 26 weeks in a calendar year; [1999, c. 750, §1 (NEW).]

G. A medical intern or resident engaged in a graduate educational program approved by the Accreditation Council on Graduate Medical Education, the American Board of Medical Specialties or the American Osteopathic Association at a health care facility. For purposes of this paragraph, "health care facility" has the same meaning as in Title 22, section 8702, subsection 4; or [1999, c. 750, §1 (NEW).]

H. An employee who works for an employer who shuts down an operation for annual maintenance or work performed in the construction, rebuilding, maintenance or repair of production machinery and equipment, including machine start-ups and shutdowns related to such activity. This exception applies to contractors of the employer that are providing services related to the activities in this paragraph. It does not apply to other operations not involved in the work stated in this paragraph. Notwithstanding this paragraph, a worker may not be required to work beyond the limits prescribed in subsection 2 for more than 4 consecutive weeks. [1999, c. 750, §1 (NEW).]

[ 2007, c. 640, §1 (AMD) .]

**4**. **Lower limit by agreement.** Employers and employees may agree to limit mandatory overtime to fewer hours than provided for in this section.

[ 1999, c. 750, §1 (NEW) .]

**5**. **Exception for nurse.** Notwithstanding subsection 2, a nurse may not be disciplined for refusing to work more than 12 consecutive hours. A nurse may be disciplined for refusing mandatory overtime in the case of an unforeseen emergent circumstance when overtime is required as a last resort to ensure patient safety. Any nurse who is mandated to work more than 12 consecutive hours, as permitted by this section, must be allowed at least 10 consecutive hours of off-duty time immediately following the worked overtime.

This subsection does not apply to overtime for performance of services described in subsection 3, paragraph A or C.

[ 2001, c. 401, §1 (NEW) .]

SECTION HISTORY
1999, c. 750, §1 (NEW). 2001, c. 401, §1 (AMD). 2007, c. 640, §1 (AMD).

## §604. NURSING MOTHERS IN THE WORKPLACE

An employer, as defined in section 603, subsection 1, paragraph A, shall provide adequate unpaid break time or permit an employee to use paid break time or meal time each day to express breast milk for her nursing child for up to 3 years following childbirth. The employer shall make reasonable efforts to provide a clean room or other location, other than a bathroom, where an employee may express breast milk in privacy. An employer may not discriminate in any way against an employee who chooses to express breast milk in the workplace. [2009, c. 84, §1 (NEW).]

SECTION HISTORY
2009, c. 84, §1 (NEW).

## Subchapter 1-B: EMPLOYMENT AGENCIES

## §611. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1985, c. 623, §1 (NEW).]

**1**. **Employment agency.** "Employment agency" means any person who conducts a full-time or part-time service for the purpose of procuring or attempting to procure permanent or temporary employment or engagement for persons seeking employment or engagement, or for giving information about where employment or engagement may be procured when a fee paid by the employee is charged for that service. Employment agencies do not include teachers' agencies, nurses' associations, charitable institutions, arrangers of employment for seamen and professional or occupational associations which serve only their own membership and which charge only a nominal fee, and persons employed by a public or private nonprofit agency.

[ 1985, c. 623, §1 (NEW) .]

SECTION HISTORY
1985, c. 623, §1 (NEW).

## §612. FEES CHARGED TO APPLICANTS FOR EMPLOYMENT; RECEIPT

**1**. **Placement fee.** The placement fee charged to an applicant for employment by an employment agency shall not exceed the equivalent of the first full week's gross wages. This fee shall be in full compensation for all services of the employment agency. If for any reason employment terminates in less than one month, the fee shall be adjusted so as not to exceed 10% of the wages earned.

[ 1985, c. 623, §1 (NEW) .]

**2**. **Terms of payment of fee for placement.** If the placement fee charged to an applicant for employment is paid weekly, 1/8 of the fee shall be paid each week for the first 8 weeks of employment; if paid semi-monthly, each payment shall be 1/4 of the total fee; and if paid monthly, each payment shall be 1/2 of the total fee.

[ 1985, c. 623, §1 (NEW) .]

**3**. **Receipt given to an applicant for employment.** Every employment agency shall give to each applicant for employment, from whom a fee or other consideration is received, a receipt which must show the name of the applicant for employment, the amount of the fee, any balance due, the date, name or nature of the employment or situation procured and the name and address of the employer.

[ 1985, c. 623, §1 (NEW) .]

SECTION HISTORY
1985, c. 623, §1 (NEW).

## §612-A. MUNICIPAL LICENSING

This subchapter may not be construed to prevent a municipality from acting under its home rule authority granted by Title 30-A, section 3001 and by the Constitution of Maine, Article VIII, Part Second, to license or regulate the business of employment agencies or to require a bond. [1991, c. 824, Pt. A, §55 (AMD).]

SECTION HISTORY
1987, c. 583, §2 (NEW). 1991, c. 824, §A55 (AMD).

## §613. ENFORCEMENT PENALTY

**1**. **Violation.** Any employment agency which violates this subchapter commits a civil violation for which a forfeiture of not less than $100 nor more than $500 for each violation may be adjudged.

[ 1985, c. 623, §1 (NEW) .]

**2**. **Civil action.** An action may be brought by the injured party, the Attorney General, the Department of Labor or any municipality which has issued a license to the employment agency in accordance with section 612-A.

[ 1987, c. 583, §3 (AMD) .]

SECTION HISTORY
1985, c. 623, §1 (NEW). 1987, c. 583, §3 (AMD).

# Subchapter 1-C: EMPLOYEE SOCIAL MEDIA PRIVACY

## §615. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2015, c. 343, Pt. B, §1 (NEW).]

**1**. **Applicant.** "Applicant" means an applicant for employment.

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**2**. **Employee.** "Employee" means an individual who provides services or labor for an employer for wages or other remuneration.

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**3**. **Employer.** "Employer" means a person in this State who employs individuals and includes the State and political subdivisions of the State. "Employer" includes a person acting in the interest of an employer directly or indirectly.

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**4**. **Social media account.** "Social media account" means an account with an electronic medium or service through which users create, share and view user-generated content including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant and text messages, e-mail, online service accounts and Internet website profiles and locations. "Social media account" does not include an account opened at an employer's behest or provided by an employer or intended to be used primarily on behalf of an employer.

[ 2015, c. 343, Pt. B, §1 (NEW) .]

SECTION HISTORY
2015, c. 343, Pt. B, §1 (NEW).

## §616. PROHIBITIONS

An employer may not: [2015, c. 343, Pt. B, §1 (NEW).]

**1**. **Passwords.** Require or coerce an employee or applicant to disclose, or request that an employee or applicant disclose, the password or any other means for accessing a personal social media account;

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**2**. **Access in presence.** Require or coerce an employee or applicant to access, or request that an employee or applicant access, a personal social media account in the presence of the employer or an agent of the employer;

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**3**. **Information.** Require or coerce an employee or applicant to disclose any personal social media account information;

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**4**. **Contacts.** Require or cause an employee or applicant to add anyone, including the employer or an agent of the employer, to the employee's or applicant's list of contacts associated with a personal social media account;

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**5**. **Settings.** Require or cause an employee or applicant to alter, or request that an employee or applicant alter, settings that affect a 3rd party's ability to view the contents of a personal social media account;

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**6**. **Employees.** Discharge, discipline or otherwise penalize or threaten to discharge, discipline or otherwise penalize an employee for the employee's refusal to disclose or provide access to information as specified in subsection 1, 2 or 3 or for refusal to add anyone to the employee's list of contacts associated with a personal social media account as specified in subsection 4 or to alter the settings associated with a personal social media account as specified in subsection 5; or

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**7**. **Applicants.** Fail or refuse to hire an applicant as a result of the applicant's refusal to disclose or provide access to information specified in subsection 1, 2 or 3 or refusal to add anyone to the applicant's list of contacts associated with a personal social media account as specified in subsection 4 or to alter the settings associated with a personal social media account as specified in subsection 5.

[ 2015, c. 343, Pt. B, §1 (NEW) .]

SECTION HISTORY
2015, c. 343, Pt. B, §1 (NEW).

## §617. EXCEPTIONS

**1**. **Publicly available information.** This subchapter does not apply to information about an applicant or employee that is publicly available.

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**2**. **Duty to screen or supervise.** This subchapter does not prohibit or restrict an employer from complying with a duty to screen employees or applicants before hiring or to monitor or retain employee communications that is established by a self-regulatory organization as defined by the federal Securities

Exchange Act of 1934, 15 United States Code, Section 78c(a)(26) or under state or federal law, regulation or rule to the extent necessary to supervise communications of regulated financial institutions or insurance or securities licensees for banking-related, insurance-related or securities-related business purposes.

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**3**. **Investigation.** This subchapter does not prohibit or restrict an employer from requiring an employee to disclose personal social media account information that the employer reasonably believes to be relevant to an investigation of allegations of employee misconduct or a workplace-related violation of applicable laws, rules or regulations if requiring the disclosure is not otherwise prohibited by law, as long as the information disclosed is accessed and used solely to the extent necessary for purposes of that investigation or a related proceeding.

[ 2015, c. 343, Pt. B, §1 (NEW) .]

SECTION HISTORY
2015, c. 343, Pt. B, §1 (NEW).

## §618. WORKPLACE POLICIES

This subchapter does not limit an employer's right to promulgate and maintain lawful workplace policies governing the use of the employer's electronic equipment, including a requirement that an employee disclose to the employer the employee's user name, password or other information necessary to access employer-issued electronic devices, including but not limited to cellular telephones and computers, or to access employer-provided software or e-mail accounts. [2015, c. 343, Pt. B, §1 (NEW).]

SECTION HISTORY
2015, c. 343, Pt. B, §1 (NEW).

## §619. PENALTIES FOR VIOLATION

An employer who violates this subchapter is subject to a fine imposed by the Department of Labor of not less than $100 for the first violation, not less than $250 for the 2nd violation and not less than $500 for each subsequent violation. [2015, c. 343, Pt. B, §1 (NEW).]

SECTION HISTORY
2015, c. 343, Pt. B, §1 (NEW).

# Subchapter 2: WAGES AND MEDIUM OF PAYMENT

## §621. TIME OF PAYMENT

***(REPEALED)***

SECTION HISTORY
1983, c. 778, (RPR). 1995, c. 340, §1 (AMD). 1999, c. 465, §1 (RP).

## §621-A. TIMELY AND FULL PAYMENT OF WAGES

**1**. **Minimum frequency and full payment.** At regular intervals not to exceed 16 days, every employer must pay in full all wages earned by each employee. Each payment must include all wages earned to within 8 days of the payment date. An employee who is absent from work at a time fixed for payment must be paid on demand after that time.

[ 2005, c. 103, §1 (AMD) .]

**2**. **Regular payment required.** Wages must be paid on an established day or date at regular intervals made known to the employee. When the interval is less than the maximum allowed by subsection 1, the interval may not be increased without written notice to the employee at least 30 days in advance of the increase.

[ 1999, c. 465, §2 (NEW) .]

**3**. **Compensatory time agreements.** Notwithstanding subsections 1 and 2, public agency employers and employees may enter into compensatory time overtime agreements in accordance with the federal Fair Labor Standards Act, 29 United States Code, Section 207(o). These agreements are governed solely by federal law. For purposes of this subsection, "public agency" has the same meaning as in 29 United States Code, Section 203(x).

[ 1999, c. 790, Pt. P, §1 (NEW); 1999, c. 790, Pt. P, §3 (AFF) .]

**4**. **School personnel.** Employees of a school administrative unit who work the school year schedule may, upon written agreement between the employees and the school administrative unit, be paid for their work during the school year over 12 months or a shorter period, as provided in the written agreement. For purposes of this subsection, "written agreement" includes but is not limited to a collective bargaining agreement.

[ 2001, c. 156, §1 (AMD) .]

**5**. **Change in rate of pay.** Notwithstanding the provision of section 623 exempting salaried employees as defined in section 663, subsection 3, paragraph K, payment of wages or salary must be made at the rate previously established by the employer, except that the employer may decrease the rate of pay, effective the next working day, if the employer gives notice to all affected employees prior to the change. When an employer has temporarily increased an employee's wage rate to comply with the prevailing wage requirements of chapter 15; the federal Davis-Bacon Act, 40 United States Code, Section 276a et seq.; or other applicable federal or state law, an employer need not provide advance notice prior to returning the employee to the employee's regular wage rate, as long as the employer is in compliance with all posting and notice provisions of the applicable law. Changes of rates of pay made under a collective bargaining agreement are exempt from this requirement.

[ 2005, c. 103, §1 (AMD) .]

**6**. **Volunteer firefighters.** Notwithstanding subsection 1, a municipal fire department may make payments owed to a volunteer firefighter at regular intervals not to exceed 6 months. For purposes of this subsection, "municipal fire department" has the same meaning as in Title 30-A, section 3151, subsection 1 and "volunteer firefighter" has the same meaning as in Title 30-A, section 3151, subsection 4.

[ 2005, c. 126, §1 (NEW) .]

SECTION HISTORY
1999, c. 465, §2 (NEW). 1999, c. 790, §P1 (AMD). 1999, c. 790, §P3 (AFF). 2001, c. 156, §1 (AMD). 2005, c. 18, §1 (AMD). 2005, c. 103, §1 (AMD). 2005, c. 126, §1 (AMD).

## §622. RECORDS

Every employer shall keep a true record showing the date and amount paid to each employee pursuant to section 621-A. Every employer shall keep a daily record of the time worked by each such employee unless the employee is paid a salary that is fixed without regard for the number of hours worked. Records required

to be kept by this section must be accessible to any representative of the department at any reasonable hour. Sections 621-A to 623 do not excuse any employer subject to section 702 from keeping the records required by that section. [1999, c. 465, §3 (RPR).]

SECTION HISTORY
1975, c. 113, §1 (AMD). 1999, c. 465, §3 (RPR).

## §623. EXEMPTIONS

This section and sections 621-A and 622 do not apply to family members and salaried employees as defined in section 663, subsection 3, paragraphs J and K. Sections 621-A and 622 do not apply to an employee of a cooperative corporation or association if the employee is a stockholder of the corporation or association, unless the employee requests the association or corporation to pay that employee in accordance with section 621-A. Except as provided in section 621-A, subsections 3, 4 and 5, a corporation, contractor, person or partnership may not by a special contract with an employee or by any other means exempt itself from this section and sections 621-A and 622. [2005, c. 18, §2 (AMD).]

SECTION HISTORY
1973, c. 40, (AMD). 1975, c. 113, §2 (AMD). 1999, c. 465, §4 (AMD). 1999, c. 790, §P2 (AMD). 1999, c. 790, §P3 (AFF). 2005, c. 18, §2 (AMD).

## §624. PENALTIES

***(REPEALED)***

SECTION HISTORY
1975, c. 113, §3 (RP).

## §625. NOTICE OF INTENTION TO QUIT

Any person, firm or corporation engaged in any manufacturing or mechanical business may contract with adult or minor employees to give one week's notice of intention on such employee's part to quit such employment under a penalty of forfeiture of one week's wages. In such case, the employer shall be required to give a like notice of intention to discharge the employee, and on failure, shall pay to such employee a sum equal to one week's wages. No such forfeiture shall be enforced when the leaving or discharge of the employee is for a reasonable cause. The enforcement of the penalty shall not prevent either party from recovering damages for a breach of the contract of hire.

SECTION HISTORY
1971, c. 452, (AMD). 1973, c. 545, (AMD). 1975, c. 512, §§1,2 (AMD).

## §625-A. SEVERANCE PAY

***(REPEALED)***

SECTION HISTORY
1975, c. 512, §3 (NEW). 1975, c. 717, §4 (AMD). 1979, c. 663, §156 (RP).

## §625-B. SEVERANCE PAY DUE TO CLOSING, SUBSTANTIAL SHUTDOWN OR RELOCATION OF A COVERED ESTABLISHMENT

**1**. **Definitions.** As used in this section, unless the context otherwise indicates, the following words have the following meanings.

A. "Covered establishment" means any industrial or commercial facility or part thereof that employs or has employed at any time in the preceding 12-month period 100 or more persons. [2015, c. 417, §1 (AMD).]

A-1. "Closing" means the permanent shutdown of industrial or commercial operations at a covered establishment. A closing may occur due to relocation, termination or consolidation of the employer's business. [2015, c. 417, §1 (NEW).]

B. "Director" means the Director of the Bureau of Labor Standards. [1989, c. 502, Pt. A, §106 (AMD).]

B-1. "Eligible employee" means any employee who:

(1) Has been continuously employed at the covered establishment at the time of the closing or mass layoff for at least 3 years, including any period when the employee was on a leave of absence;

(2) Has not been terminated for cause; and

(3) Has not accepted employment at another or relocated establishment operated by the employer or remains employed at the covered establishment.

"Eligible employee" includes an employee who has voluntarily quit employment at a covered establishment to take a new job within a 30-day period prior to the date set by the employer for a closing or mass layoff in an initial notice provided by the employer under state or federal law. [2015, c. 417, §1 (NEW).]

C. "Employer" means any person who directly or indirectly owns and operates a covered establishment. For purposes of this definition, a parent corporation is considered the indirect owner and operator of any covered establishment that is directly owned and operated by its corporate subsidiary. [1989, c. 667, §1 (AMD); 1989, c. 667, §2 (AFF).]

C-1. "Gross earnings" includes all pay for regular hours, shift differentials, premiums, overtime, floating holidays, holidays, funeral leave, jury duty pay, sick pay and vacation pay earned within the last 12 months prior to the closing or mass layoff. "Gross earnings" does not include payments made under a 3rd-party benefit program, such as disability payments. [2015, c. 417, §1 (NEW).]

C-2. "Mass layoff" means a reduction in workforce, not the result of a closing, that results in an employment loss at a covered establishment for at least 6 months of at least:

(1) Thirty-three percent of the employees and at least 50 employees; or

(2) Five hundred employees. [2015, c. 417, §1 (NEW).]

D. "Person" means any individual, group of individuals, partnership, corporation, association or any other entity. [1979, c. 663, §157 (NEW).]

E. "Physical calamity" means any calamity such as fire, flood or other natural disaster. [2009, c. 305, §1 (AMD); 2009, c. 305, §5 (AFF).]

F. "Relocation" means the removal of all or substantially all of industrial or commercial operations in a covered establishment to a new location, within or without the State of Maine, 100 or more miles distant from its original location. [1979, c. 663, §157 (NEW).]

G. [2015, c. 417, §1 (RP).]

H. "Week's pay" means an amount equal to the employee's gross earnings during the 12 months previous to the date of closing or mass layoff as established by the director, divided by the number of weeks in which the employee received gross earnings during that 12-month period. [2015, c. 417, §1 (AMD).]

[ 2015, c. 417, §1 (AMD) .]

**2**. **Severance pay.** Any employer who closes or engages in a mass layoff at a covered establishment is liable to eligible employees of the covered establishment for severance pay at the rate of one week's pay for each year, and partial pay for any partial year, from the last full month of employment by the employee in that establishment. The severance pay to eligible employees is in addition to any final wage payment to the employee and must be paid within one regular pay period after the employee's last full day of work, notwithstanding any other provisions of law.

[ 2015, c. 417, §1 (AMD) .]

**3**. **Mitigation of severance pay liability.** There is no liability under this section for severance pay to an eligible employee if:

A. Closing of or a mass layoff at a covered establishment is necessitated by a physical calamity or the final order of a federal, state or local government agency; [2015, c. 417, §1 (AMD).]

B. The employee is covered by, and has actually been paid under the terms of, an express contract providing for severance pay that is in an amount that is greater than the severance pay required by this section. An employer must demonstrate, to the satisfaction of the director, that the severance pay provided under the terms of an express contract provides a greater benefit to the employee than provided in this section; or [2015, c. 417, §1 (AMD).]

C. [2015, c. 417, §1 (RP).]

D. The employee has been employed by the employer for less than 3 years. [2015, c. 417, §1 (AMD).]

E. [2015, c. 417, §1 (RP).]

[ 2015, c. 417, §1 (AMD) .]

**3-A**. **Bankruptcy proceedings.** A covered establishment is not exempt from liability for severance pay under this section solely because it files a voluntary petition for bankruptcy protection under the provisions of Chapter 7 or Chapter 11 of the United States Bankruptcy Code, 11 United States Code, Section 101, et seq., or because an involuntary petition is commenced against it pursuant to 11 United States Code, Section 303.

[ 2015, c. 417, §1 (NEW) .]

**4**. **Suits by, or on behalf of, employees.** Any employer who violates the provisions of this section is liable to the employee or employees affected in the amount of their unpaid severance pay. Action to recover the liability may be maintained against any employer in any state or federal court of competent jurisdiction by any one or more employees for and on behalf of that employee or those employees and any other employees similarly situated. Any labor organization may also maintain an action on behalf of its members. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant and costs of the action.

[ 2015, c. 417, §1 (AMD) .]

**5**. **Suits by the director.** The director is authorized to supervise the payment of the unpaid severance pay owing to any employee under this section. The director may bring an action in any court of competent jurisdiction to recover the amount of any unpaid severance pay. The right provided by subsection 4 to bring an action by or on behalf of any employee, and of any employee to become a party plaintiff to any pending action brought and maintained under subsection 4, terminates upon the filing of a complaint by the director in an action under this subsection, unless the action is dismissed without prejudice by the director. Any sums recovered by the director on behalf of an employee pursuant to this subsection must be held in a special

deposit account and must be paid, on order of the director, directly to the employee affected. Any sums thus recovered not paid to an employee because of inability to do so within a period of 3 years must be paid over to the State of Maine.

[ 2015, c. 417, §1 (AMD) .]

**6**. **Notice of director.** Any person proposing to relocate or close a covered establishment shall notify the director in writing not less than 60 days prior to the relocation or closing. A person initiating a mass layoff at a covered establishment shall notify the director as far in advance as practicable, and no later than within 7 days of the layoff, and shall report to the director the expected duration of the layoff and whether it is of indefinite or definite duration. The director shall, from time to time, but no less frequently than every 30 days, require the employer to report such facts as the director considers relevant to determine whether the mass layoff constitutes a closing under this section or whether there is a substantial reason to believe the affected employees will be recalled. A notification or report provided to the director pursuant to this subsection must contain all relevant information in the possession of the employer regarding a potential recall, if applicable.

[ 2015, c. 417, §1 (AMD) .]

**6-A**. **Notice to employees and municipality.** A person proposing to close a covered establishment shall notify employees and the municipal officers of the municipality where the covered establishment is located in writing not less than 60 days prior to the closing, unless this notice requirement is waived by the director. A person that violates this provision commits a civil violation for which a fine of not more than $500 may be adjudged, except that a fine may not be adjudged if the closing is necessitated by a physical calamity or the final order of a federal, state or local government agency, or if the failure to give notice is due to unforeseen circumstances. A fine imposed pursuant to this subsection may not be collected by the Department of Labor to the extent such collection prevents the violator from making all payments required under subsection 2.

[ 2015, c. 417, §1 (AMD) .]

**7**. **Powers of director.** In any investigation or proceeding under this section, the director has, in addition to all other powers granted by law, the authority to examine books and records of any employer affected by this section as set out in section 665, subsection 1.

[ 2015, c. 417, §1 (AMD) .]

**8**. **Rules.** The Department of Labor shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2015, c. 417, §1 (AMD) .]

**9**. **Penalties.** A person that violates subsection 2 commits a civil violation for which a fine of not more than $1,000 per violation may be adjudged. Each employee affected constitutes a separate violation. Any such fine may not be collected by the Department of Labor to the extent such collection prevents the violator from making all payments required under subsection 2.

[ 2007, c. 333, §2 (NEW) .]

**10**. **Mass layoff.**

[ 2015, c. 417, §1 (RP) .]

SECTION HISTORY

1979, c. 663, §157 (NEW). 1981, c. 337, (AMD). 1989, c. 502, §A106 (AMD). 1989, c. 667, §§1,2 (AMD). 1999, c. 55, §1 (AMD). 2001, c. 625, §1 (AMD). 2003, c. 624, §1 (AMD). 2003, c. 624, §2 (AFF). 2007, c. 333, §§1, 2 (AMD). 2009, c. 305, §§1-4 (AMD). 2009, c. 305, §5 (AFF). 2015, c. 417, §1 (AMD).

## §626. CESSATION OF EMPLOYMENT

An employee leaving employment must be paid in full within a reasonable time after demand at the office of the employer where payrolls are kept and wages are paid, provided that any overcompensation may be withheld if authorized under section 635 and any loan or advance against future earnings or wages may be deducted if evidenced by a statement in writing signed by the employee. Whenever the terms of employment include provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned. [1991, c. 162, (AMD).]

For purposes of this section, the term "employee" means any person who performs services for another in return for compensation, but does not include an independent contractor. [1991, c. 162, (NEW).]

For purposes of this subchapter, a reasonable time means the earlier of either the next day on which employees would regularly be paid or a day not more than 2 weeks after the day on which the demand is made. [1991, c. 162, (AMD).]

In any action for unpaid wages brought under this subchapter, the employer may not deduct as a setoff or counterclaim any money allegedly due the employer as compensation for damages caused to the employer's property by the employee, or any money allegedly owed to the employer by the employee, notwithstanding any procedural rules regarding counteractions, provided that any overcompensation may be withheld if authorized under section 635 and any loan or advance against future earnings or wages may be deducted if evidenced by a statement in writing signed by the employee, and that nothing in this section may be construed to limit or restrict in any way any rights that the employer has to recover, by a separate legal action, any money owed the employer by the employee. [1991, c. 162, (AMD).]

An action for unpaid wages under this section may be brought by the affected employee or employees or by the Department of Labor on behalf of the employee or employees. An employer found in violation of this section is liable for the amount of unpaid wages and, in addition, the judgment rendered in favor of the employee or employees must include a reasonable rate of interest, an additional amount equal to twice the amount of those wages as liquidated damages and costs of suit, including a reasonable attorney's fee. [1991, c. 162, (AMD).]

Within 2 weeks after the sale of a business, the seller of the business shall pay employees of that business any wages earned while employed by the seller. If the terms of employment include provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned. The seller of a business may comply with the provisions of this paragraph through a specific agreement with the buyer in which the buyer agrees to pay any wages earned by employees through employment with the seller and to honor any paid vacation earned under the seller's vacation policy. [1995, c. 580, §1 (NEW).]

SECTION HISTORY
1975, c. 113, §4 (RPR). 1975, c. 623, §§37-A,37-B (AMD). 1983, c. 652, §1 (AMD). 1991, c. 162, (AMD). 1995, c. 580, §1 (AMD).

## §626-A. PENALTIES

Whoever violates any of the provisions of sections 621-A to 623 or section 626, 628, 629 or 629-B is subject to a forfeiture of not less than $100 nor more than $500 for each violation. [1999, c. 465, §5 (AMD).]

Any employer is liable to the employee or employees for the amount of unpaid wages and health benefits. Upon a judgment being rendered in favor of any employee or employees, in any action brought to recover unpaid wages or health benefits under this subchapter, such judgment includes, in addition to the

unpaid wages or health benefits adjudged to be due, a reasonable rate of interest, costs of suit including a reasonable attorney's fee, and an additional amount equal to twice the amount of unpaid wages as liquidated damages. [1993, c. 648, §1 (AMD).]

Remedies for unpaid wages do not become available to the employee except as follows. If the wages are clearly due without a bona fide dispute, remedies are available to the employee 8 days after the due date for payment. If there is a bona fide dispute at the time payment is due, remedies become available to the employee 8 days after demand when the wages are, in fact, due and remain unpaid. [1999, c. 465, §5 (NEW).]

The action for unpaid wages or health benefits may be brought by either the affected employee or employees or by the Department of Labor. The Department of Labor is further authorized to supervise the payment of the judgment, collect the judgment on behalf of the employee or employees and collect fines incurred through violation of this subchapter. When the Department of Labor brings an action for unpaid wages or health benefits, this action and an action to collect a civil forfeiture may both be joined in the same proceeding. [1993, c. 648, §1 (AMD).]

SECTION HISTORY
1975, c. 113, §5 (NEW). 1975, c. 623, §§37-C (AMD). 1975, c. 770, §114 (AMD). 1983, c. 652, §§2,3 (AMD). 1993, c. 648, §1 (AMD). 1999, c. 465, §5 (AMD).

## §626-B. COLLECTIVE BARGAINING EXCEPTIONS

***(REPEALED)***

SECTION HISTORY
1975, c. 113, §5 (NEW). 1999, c. 465, §6 (RP).

## §627. ASSIGNMENT OF WAGES

No assignment of wages is valid against any other person than the parties thereto, unless such assignment is recorded by the clerk in the office of the Secretary of State. No such assignment of wages may be valid against the employer, unless he has actual notice thereof. [1987, c. 184, §24 (AMD).]

An assignment of wages executed in satisfaction of a child support obligation shall have absolute priority over all previously filed orders against earnings entered pursuant to Title 14, section 3127-B and former section 3137, and over any other assignment of wages, which orders and assignments were entered after July 24, 1984. [1987, c. 184, §24 (AMD).]

SECTION HISTORY
1983, c. 782, §5 (AMD). 1987, c. 184, §24 (AMD).

## §628. EQUAL PAY

An employer may not discriminate between employees in the same establishment on the basis of sex by paying wages to any employee in any occupation in this State at a rate less than the rate at which the employer pays any employee of the opposite sex for comparable work on jobs that have comparable requirements relating to skill, effort and responsibility. Differentials that are paid pursuant to established seniority systems or merit increase systems or difference in the shift or time of the day worked that do not discriminate on the basis of sex are not within this prohibition. An employer may not discharge or discriminate against any employee by reason of any action taken by such employee to invoke or assist in any manner the enforcement of this section. An employer may not prohibit an employee from disclosing the employee's own wages or from inquiring about another employee's wages if the purpose of the disclosure or inquiry is to enforce the rights granted by this section. Nothing in this section creates an obligation to disclose wages. [2009, c. 29, §1 (AMD).]

The Department of Labor shall annually report to the joint standing committee of the Legislature having jurisdiction over labor matters on progress made in the State to comply with this section. The report must be issued annually on Equal Pay Day as designated pursuant to Title 1, section 145. [2003, c. 688, Pt. B, §7 (AMD).]

SECTION HISTORY
1965, c. 150, (AMD). 1983, c. 652, §4 (AMD). 2001, c. 304, §2 (AMD). 2003, c. 688, §B7 (AMD). 2009, c. 29, §1 (AMD).

## §629. UNFAIR AGREEMENTS

**1**. **Work without compensation; return of compensation.** A person, firm or corporation may not require or permit any person as a condition of securing or retaining employment to work without monetary compensation or when having an agreement, oral, written or implied, that a part of such compensation should be returned to the person, firm or corporation for any reason other than for the payment of a loan, debt or advance made to the person, or for the payment of any merchandise purchased from the employer or for sick or accident benefits, or life or group insurance premiums, excluding compensation insurance, that an employee has agreed to pay, or for rent, light or water expense of a company-owned house or building. This section does not apply to work performed in agriculture or in or about a private home.

[ 2007, c. 524, §1 (RPR) .]

**2**. **Debt.** For purposes of this subchapter, "debt" means a benefit to the employee. "Debt" does not include items incurred by the employee in the course of the employee's work or dealing with customers on the employer's behalf, such as cash shortages, inventory shortages, dishonored checks, dishonored credit cards, damages to the employer's property in any form or any merchandise purchased by a customer. “Debt” does not include uniforms, personal protective equipment or other tools of the trade that are considered to be primarily for the benefit or convenience of the employer. As used in this subsection, “uniforms” means shirts or other items of clothing bearing the company name or logo. The employer may not mandate that an employee pay for the cleaning and maintenance of a uniform, but may have a written agreement whereby the employee chooses to have a payroll deduction for the cost of cleaning and maintenance.

[ 2007, c. 524, §1 (RPR) .]

**3**. **Penalty.** An employer is liable to an employee for the amount returned to the employer by that employee as prohibited in this section.

[ 2007, c. 524, §1 (RPR) .]

**4**. **Deduction of service fees.** Public employers may deduct service fees owed by an employee to a collective bargaining agent from the employee's pay, without signed authorization from the employee, and remit those fees to the bargaining agent, as long as:

A. The fee obligation arises from a lawfully executed and implemented collective bargaining agreement; and [2007, c. 524, §1 (RPR).]

B. In the event a fee payor owes any arrears on the payor's fee obligations, the deduction authorized under this subsection may include an installment on a payment plan to reimburse all arrears, but may not exceed in each pay period 10% of the gross pay owed. [2007, c. 524, §1 (RPR).]

[ 2007, c. 524, §1 (RPR) .]

SECTION HISTORY
1981, c. 285, (AMD). 1983, c. 652, §5 (AMD). 2007, c. 357, §1 (AMD). 2007, c. 415, §1 (RPR). 2007, c. 524, §1 (RPR).

## §629-A. FRINGE BENEFITS AS WAGES

Whenever a person ceases to be employed because of the insolvency of his employer, if in claiming from the employer wages earned but not yet paid to him, the term "wages earned" shall include all fringe benefits earned by the employee that were considered in the employment contract, including plans for retirement, insurance, health care and vacations. [1977, c. 448, (NEW).]

SECTION HISTORY
1977, c. 448, (NEW).

## §629-B. EMPLOYEE HEALTH BENEFIT PLANS

**1**. **Application.** This section applies to health benefit plans which an employer provides or agrees to provide to his employees. It does not apply to employee health benefit plans separately provided by any employee organization or bargaining agent, regardless of any financial contribution to that plan by the employer.

[ 1985, c. 660, (NEW) .]

**2**. **Failure to implement a health benefit plan.** If an employer fails to implement a health benefit plan which the employer had agreed to provide to his employees, the employer shall notify the employees of the failure to implement the plan as soon as possible after he knows that he will not implement the plan. The employer is liable for benefits which would have been payable to a covered employee, if the health benefit plan had been in force during the period of time from the date which the employer had agreed to implement the health benefit plan, until the employer gives the employee notice of his failure or inability to provide the health benefit plan.

[ 1985, c. 660, (NEW) .]

**3**. **Termination or change in carriers of a health benefit plan.** If an employer terminates a health benefit plan for employees, if a health benefit plan for employees is terminated for failure to pay premium or for any other reason or if the insurance carrier administering the health benefit plan is changed, the employer shall notify the covered employees of the termination of their coverage or the change of carriers at least 10 days before the termination or the change of carriers takes effect. The employer is liable for benefits which would have been payable to a covered employee had the health benefit plan remained in force and not been terminated or the carrier changed during the period of time following the termination of or change in carrier of the health benefit plan until the employee is given notice of the termination or the change of carrier.

[ 1985, c. 660, (NEW) .]

**4**. **Notice.** Whenever notice to an employee is required under this section, the notice must:

A. Be in writing; and [1985, c. 660, (NEW).]

B. Be delivered:

(1) In person to the employee;

(2) To the employee by the same means as and along with wages due the employee; or

(3) By mailing the notice to the employee's last known address. [1985, c. 660, (NEW).]

[ 1985, c. 660, (NEW) .]

**5**. **Wage withholdings.** When an employer makes withholdings from employees' wages for contributions to health benefit plans, the employer shall be the trustee of the funds until they are paid to the health carrier. The employer is liable to an employee for any wages withheld for the purpose of financing an employee health benefit plan and which are not actually used for that purpose.

[ 1985, c. 660, (NEW) .]

**6**. **Action; parties.** An action for benefits under this section may be brought by:

A. The affected employee or employees; or [1985, c. 660, (NEW).]

B. The Department of Labor on behalf of the employee or employees. [1985, c. 660, (NEW).]

[ 1985, c. 660, (NEW) .]

**7**. **Lien.** Whoever loses wages or medical benefits due to an employer's violation of this section shall have a lien against the employer's real estate or personal property for the full amount of the wages wrongfully withheld and the medical benefits for which the employer is liable under this section.

A. The lien shall be created by filing the statement described in this subsection in the appropriate place for filing an execution lien on real property, personal property or motor vehicles under Title 14, section 4651-A. The statement filed must contain:

(1) A statement of the amount of wages or medical benefits claimed to have been lost;

(2) The name and address of the employer and the name and address of the person claiming the loss of wages or benefits; and

(3) A recital that by virtue of the loss a lien is claimed on the real estate or personal property of the employer for the amount of the claim.

The statement must be subscribed and sworn to by the person claiming the lien or by someone on his behalf. Upon the filing of the statement, the amount claimed in the statement shall constitute a lien upon the property for which the statement is filed. [1987, c. 231, (NEW).]

B. A lien created under this subsection is void 20 days after the date on which the statement described in paragraph A was filed unless, within the 20-day period, the person claiming the lien or someone on his behalf notifies the employer, by certified or registered mail sent to the employer's last known address, of the existence of the lien. The notice must contain the following:

(1) The fact that a lien has been filed;

(2) The date and place the lien was filed;

(3) The amount of the claim on which the lien is based;

(4) The name of the person making the claim and his attorney, if any, including their addresses; and

(5) The following statement: "To dissolve this lien, please contact (the person making the claim or his attorney). A bond may be given to the claimant to replace the lien." [1987, c. 231, (NEW).]

C. A lien created under this subsection is void 90 days after the date on which the statement described in paragraph A was filed unless, within the 90-day period, an action to enforce the lien is commenced and a clerk's certificate of the commencement of the action is filed in the place where the statement is filed. Upon the filing of the clerk's certificate, the lien shall continue until a final judgment. Thereafter, extensions of the lien shall be governed by the provisions for extensions of attachments in Title 14, section 4601. [1987, c. 231, (NEW).]

D. An employer may, at any time after he receives notice of a lien under paragraph B, give bond, with sufficient sureties, in the amount of the claim to the person claiming the lien. Within 7 days of receipt of the bond, the person claiming the lien or someone on his behalf shall discharge the lien. [1987, c. 231, (NEW).]

[ 1987, c. 231, (AMD) .]

**8**. **Exceptions.** The following exceptions apply.

A. An employer is not liable under this section for benefits which would have been payable under an employee health benefit plan if the failure to provide the notice required by subsection 2 or 3 is due to circumstances beyond the control of the employer. [1985, c. 660, (NEW).]

B. This section does not apply to any termination of or failure to implement an employee health benefit plan which results from or occurs during a strike or lockout. Section 634 applies to the termination of any employee health benefit plan during a strike. [1985, c. 660, (NEW).]

[ 1985, c. 660, (NEW) .]

SECTION HISTORY
1985, c. 660, (NEW). 1987, c. 231, (AMD).

## §630. WRITTEN STATEMENT OF REASON FOR TERMINATION OF EMPLOYMENT

An employer shall, upon written request of the affected employee, give that employee the written reasons for the termination of that person's employment. An employer who fails to satisfy this request within 15 days of receiving it may be subject to a forfeiture of not less than $50 nor more than $500. An employee may bring an action in the District Court or the Superior Court for such equitable relief, including an injunction, as the court may consider to be necessary and proper. The employer may also be required to reimburse the employee for the costs of suit, including a reasonable attorney's fee if the employee receives a judgment in the employee's favor. This section does not apply to public employees in proceedings governed by Title 1, section 405. [1997, c. 356, §1 (AMD).]

SECTION HISTORY
1975, c. 420, (NEW). 1979, c. 175, (AMD). 1997, c. 356, §1 (AMD).

## §631. EMPLOYEE RIGHT TO REVIEW PERSONNEL FILE

The employer shall, upon written request from an employee or former employee, provide the employee, former employee or duly authorized representative with an opportunity to review and copy the employee's personnel file if the employer has a personnel file for that employee. The reviews and copying must take place at the location where the personnel files are maintained and during normal office hours unless, at the employer's discretion, a more convenient time and location for the employee are arranged. In each calendar year, the employer shall provide, at no cost to the employee, one copy of the entire personnel file when requested by the employee or former employee and, when requested by the employee or former employee, one copy of all the material added to the personnel file after the copy of the entire file was provided. The cost of copying any other material requested during that calendar year is paid by the person requesting the copy. For the purpose of this section, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits and nonprivileged medical records or nurses' station notes relating to the employee that the employer has in the employer's possession. Records in a personnel file may be maintained in any form including paper, microfiche or electronic form. The employer shall take adequate steps to ensure the integrity and confidentiality of these records. An employer maintaining records in a form other than paper shall have available to the employee, former employee or duly authorized representative the equipment necessary to

review and copy the personnel file. Any employer who, following a request pursuant to this section, without good cause fails to provide an opportunity for review and copying of a personnel file, within 10 days of receipt of that request, is subject to a civil forfeiture of $25 for each day that a failure continues. The total forfeiture may not exceed $500. An employee, former employee or the Department of Labor may bring an action in the District Court or the Superior Court for such equitable relief, including an injunction, as the court may consider to be necessary and proper. The employer may also be required to reimburse the employee, former employee or the Department of Labor for costs of suit including a reasonable attorney's fee if the employee or the department receives a judgment in the employee's or department's favor, respectively. For the purposes of this section, the term "nonprivileged medical records or nurses' station notes" means all those materials that have not been found to be protected from discovery or disclosure in the course of civil litigation under the Maine Rules of Civil Procedure, Rule 26, the Maine Rules of Evidence, Article V or similar rules adopted by the Workers' Compensation Board or other administrative tribunals. [2003, c. 58, §1 (AMD).]

SECTION HISTORY
1975, c. 694, §2 (NEW). 1979, c. 66, §§1,2 (AMD). 1989, c. 178, (AMD). 1991, c. 105, (AMD). 1991, c. 885, §D2 (AMD). 1997, c. 420, §1 (AMD). 1999, c. 235, §1 (AMD). 2003, c. 58, §1 (AMD).

## §632. FUND FOR UNPAID WAGES

**1**. **Fund established.** There is established a Maine Wage Assurance Fund to be used by the Bureau of Labor Standards within the Department of Labor for the purpose of assuring that all former employees of employers within the State receive payment for wages for a maximum of 2 weeks for the work they have performed. The Legislature intends that payment of earned wages from the fund be limited to those cases when the employer has terminated his business and there are no assets of the employer from which earned wages may be paid, or when the employer has filed under any provision of the Federal Bankruptcy Act. No officer or director in the case of a corporation, no partner in the case of a partnership and no owner in the case of a sole proprietorship may be considered an employee for purposes of this section.

[ 1983, c. 172, (AMD) .]

**2**. **Administration.** The fund shall be administered by the Director of the Bureau of Labor Standards. Applications for payment from the fund and disbursements from the fund shall be in accordance with regulations promulgated by the director. The State shall be subrogated to any claims against an employer for unpaid wages by an employee who has received payment from the fund. Subrogation to these claims shall be to the extent of payment from the fund to the employee.

[ 1989, c. 502, Pt. A, §107 (AMD) .]

**3**. **Amount in fund.** The Maine Wage Assurance Fund is a nonlapsing, revolving fund limited to a maximum of $200,000. All money collected from an employer pursuant to a claim for unpaid wages by an employee who has received payment from the fund, or by the State as the employee's subrogee, is credited to the fund.

The fund must be established and augmented periodically as necessary.

Money in the fund not needed currently to meet claims against the fund must be deposited with the Treasurer of State to be credited to the fund and may be invested in such manner as is provided for by statute. Interest received on that investment must be credited to the Maine Wage Assurance Fund.

*§632. Information to be furnished to railroad employees*

*(As enacted by PL 1979, c. 287 is REALLOCATED TO TITLE 26, SECTION 633)*

[ 2009, c. 25, §1 (AMD) .]

SECTION HISTORY
1979, c. 202, §1 (NEW). 1979, c. 287, (NEW). 1979, c. 663, §158 (RAL). 1983, c. 172, (AMD). 1989, c. 502, §A107 (AMD). 2009, c. 25, §1 (AMD).

## §633. INFORMATION TO BE FURNISHED TO RAILROAD EMPLOYEES

***(REALLOCATED FROM TITLE 26, SECTION 632)***

**1**. **Wage statement.** Every railroad corporation in the State shall furnish each employee of that corporation with a statement with every payment of wages, listing accrued total earnings and taxes to date, and further furnish that employee at the same time with a separate listing of his daily wages and how they were computed.

[ 1979, c. 663, §158 (RAL) .]

**2**. **Coverage.** Only railroad employees who are operating personnel working on a train are covered under this section.

[ 1979, c. 663, §158 (RAL) .]

**3**. **Penalty.** Any person, firm or corporation violating this section commits a civil violation for which a forfeiture of not more than $100 may be adjudged for each offense.

[ 1979, c. 663, §158 (RAL) .]

SECTION HISTORY
1979, c. 663, §158 (RAL).

## §634. CONTINUATION OF HEALTH INSURANCE COVERAGE DURING STRIKE; NOTICE

**1**. **Employer's duty.** During a strike, an employer may not cancel any policy of group health insurance issued pursuant to Title 24-A, section 2804 until the employer has first notified insured members that the policy is to be canceled.

[ 1981, c. 354, (NEW) .]

**2**. **Notice.** The notice requirement contained in subsection 1 is satisfied if:

A. The employee actually receives the written notice; [1981, c. 354, (NEW).]

B. The notice is mailed to the employee at an address which the employer reasonably believes is current; [1981, c. 354, (NEW).]

C. The notice is delivered to the employee by the same means as and along with wages due the employee; or [1981, c. 354, (NEW).]

D. Timely notice is given to the collective bargaining agent of the employee. [1981, c. 354, (NEW).]

[ 1981, c. 354, (NEW) .]

SECTION HISTORY

1981, c. 354, (NEW).

## §635. OVERCOMPENSATION BY EMPLOYER

**1**. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Net amount" means the amount of money due an employee as compensation after any deductions or withholdings other than an employer's withholding for the purpose of recovering any overcompensation. [1989, c. 804, (NEW).]

B. "Overcompensation" means any compensation paid to an employee that is greater than that to which the employee is entitled under the compensation system established by the employer, but does not include fringe benefits, awards, bonuses, settlements or insurance proceeds in respect to or in lieu of compensation, expense reimbursements, commissions or draws or advances against compensation. [1989, c. 804, (NEW).]

[ 1989, c. 804, (NEW) .]

**2**. **Recovery of overcompensation.** An employer who has overcompensated an employee through employer error may not withhold more than 10% of the net amount of any subsequent pay without the employee's written permission, except that, if the employee voluntarily terminates employment, the employer may deduct the full amount of overcompensation from any wages due.

[ 1989, c. 804, (NEW) .]

**3**. **Violation.** If an employer with over 25 employees violates this section, that employer forfeits any claim to the overcompensation.

If an employer with 25 or fewer employees knows of the limitation established by subsection 2 and violates this section, that employer forfeits any claim to the overcompensation. Employers of 25 or fewer employees who do not know of the limitation established by subsection 2 and who violate this section shall return all money withheld in excess of that permitted under subsection 2 within 3 days of written or oral demand by the employee, or forfeit any claim to the overcompensation.

[ 1989, c. 804, (NEW) .]

**4**. **Application.** This section is applied as follows.

A. An employer has the burden of proof, except that, if the overcompensation amounts to less than 15% of the correct net amount of the employee's compensation, the employer must prove by clear and convincing evidence that the employee knowingly accepted the overcompensation. [1989, c. 804, (NEW).]

B. If an employee knowingly accepts the overcompensation, this section does not apply. [1989, c. 804, (NEW).]

C. This section, except for the forfeiture provisions in subsection 3, does not limit or affect an employer's general civil remedies against an employee. [1989, c. 804, (NEW).]

[ 1989, c. 804, (NEW) .]

SECTION HISTORY
1989, c. 804, (NEW).

# §636. FAMILY SICK LEAVE

**1**. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Employer" means a public or private employer with 25 or more employees. [2005, c. 455, §1 (NEW).]

B. "Immediate family member" means an employee's child, spouse or parent. [2005, c. 455, §1 (NEW).]

C. "Paid leave" means time away from work by an employee for which the employee receives compensation, and is limited to sick time, vacation time, compensatory time and leave that is provided as an aggregate amount for use at the discretion of the employee for any of these same purposes. "Paid leave" does not include paid short-term or long-term disability, catastrophic leave or similar types of benefits. [2005, c. 455, §1 (NEW).]

[ 2005, c. 455, §1 (NEW) .]

**2**. **Use of paid leave.** If an employer, under the terms of a collective bargaining agreement or employment policy, provides paid leave, then the employer shall allow an employee to use the paid leave for the care of an immediate family member who is ill as provided in this section.

[ 2005, c. 455, §1 (NEW) .]

**3**. **Election of time; amount; process.** An employer may adopt a policy limiting the number of hours of paid leave taken under this section, but in no case may the number of hours allowed be fewer than 40 hours for a 12-month period. An employee is not entitled under this section to use paid leave until that leave has been earned. An employee who receives more than one type of paid leave may elect which type and the amount of each of those types of paid leave to use, except that the employee's election may be limited by a bona fide employment policy as long as the policy is uniformly applied to all employees at that workplace. An employer may require notice or verification of illness for leave taken pursuant to this section if such notice or verification is required when an employee takes leave because of the employee's own illness. An employer may require an employee to specify that leave is taken pursuant to this section.

[ 2005, c. 455, §1 (NEW) .]

**4**. **Relationship to collective bargaining.** This section applies to employees covered by a collective bargaining agreement unless the agreement provides paid leave benefits that are equal to or greater than those provided in this section.

[ 2005, c. 455, §1 (NEW) .]

**5**. **Prohibited actions by employer.** An employer may not discharge, demote, suspend, discipline or otherwise discriminate against an employee or threaten to take any of these actions against an employee who exercises rights granted under this section or who files a complaint or testifies or assists in an action brought against the employer for a violation of this section. Nothing in this section prohibits an employer from taking employment action against an employee for taking leave that is not protected by this section or other applicable law.

[ 2005, c. 455, §1 (NEW) .]

**6**. **Application of family medical leave requirements.** For purposes of applying family medical leave requirements, the employer shall treat leave under this section in the same manner as the employer treats leave for a sick employee.

[ 2005, c. 455, §1 (NEW) .]

**7**. **Enforcement; rules.** The Department of Labor shall adopt rules to implement and enforce the provisions of this section, including rules regarding the receipt, investigation and prosecution of complaints brought under this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2005, c. 455, §1 (NEW) .]

SECTION HISTORY
2005, c. 455, §1 (NEW).

## Subchapter 2-A: EMPLOYMENT STANDARDS IN THE FORESTRY INDUSTRY AND FARMING

### §641. RULE OF CONSTRUCTION

This subchapter must be liberally construed in light of the purposes of the law to ensure a safe working environment and safe transportation for forestry workers and migrant and seasonal farm workers and to prevent unfair competition in the marketplace by businesses whose practices would undermine safety and other employment standards. [2009, c. 201, §1 (AMD).]

SECTION HISTORY
2003, c. 616, §1 (NEW). 2009, c. 201, §1 (AMD).

### §642. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2003, c. 616, §1 (NEW).]

**1**. **Bureau.** "Bureau" means the Department of Labor, Bureau of Labor Standards.

[ 2003, c. 616, §1 (NEW) .]

**2**. **Code of Federal Regulations.** "Code of Federal Regulations" means the Code of Federal Regulations as of January 1, 2008.

[ 2009, c. 201, §2 (AMD) .]

**3**. **Employer.** "Employer" means:

A. With regard to a forestry worker, a person or entity that suffers or permits any forestry worker to work; and [2009, c. 201, §2 (NEW).]

B. With regard to a migrant and seasonal farm worker, a farm labor contractor. [2009, c. 201, §2 (NEW).]

[ 2009, c. 201, §2 (AMD) .]

**3-A**. **Farm labor contractor.** "Farm labor contractor" means a person or entity that employs migrant and seasonal farm workers and that is required to register with the United States Department of Labor under the federal Migrant and Seasonal Agricultural Worker Protection Act.

[ 2009, c. 201, §2 (NEW) .]

**4**. **Forestry worker.** "Forestry worker" means a person employed on a temporary or seasonal basis to perform reforestation activities, including, but not limited to, precommercial thinning, tree planting and brush clearing.

[ 2009, c. 201, §2 (AMD) .]

**5**. **Migrant and seasonal farm worker.** "Migrant and seasonal farm worker" means a person employed by a farm labor contractor on a temporary or seasonal basis to perform farm labor.

[ 2009, c. 201, §2 (NEW) .]

**6**. **Worker.** "Worker" means a forestry worker or migrant and seasonal farm worker.

[ 2009, c. 201, §2 (NEW) .]

SECTION HISTORY
2003, c. 616, §1 (NEW). 2009, c. 201, §2 (AMD).

## §643. TRANSPORTATION OF WORKERS

**1**. **Requirement.** An employer shall provide safe transportation for workers between the workers' lodgings and work sites each day at no cost to the workers.

A. A vehicle used to transport workers must meet the standards set forth in 29 Code of Federal Regulations, Section 500.105, regardless of the number of miles traveled or the type of vehicle used, and must include a working seat belt for each worker being transported. Any vehicle used to transport workers may not have any apparatus attached to the rear of the vehicle that interferes with the operation of the rear door. Equipment or any other materials that interfere with the operation of any doors or windows may not be attached to or stored in the vehicle. The number of occupants in any vehicle, other than a bus, may not exceed the manufacturer's design specifications except in no instance may it exceed 12 at any time. In the case of a 15-passenger van, compliance with this standard must be achieved by removal of the seating immediately behind the rear axle, resulting in the number of passengers in the vehicle at any one time not exceeding 11. Attachments are not allowed on the roofs of vans for the purpose of carrying gear. [2009, c. 201, §3 (AMD).]

B. Any person driving a vehicle used to transport workers must meet the driver qualifications and must follow the standards for driving set forth in 29 Code of Federal Regulations, Section 500.105. [2003, c. 616, §1 (NEW).]

C. Each vehicle used to transport workers must be equipped with a first aid kit consistent with 29 Code of Federal Regulations, section 1910.266, Appendix A and communications equipment capable of providing the most immediate access to emergency medical services. A vehicle equipped with such equipment and a driver must be available at or near the work site at all times during the work day. Emergency action plans, written in easily understandable English and in the language of the worker crews, must be developed and maintained for each job site. Plans must include information on how to transport injured workers to the nearest emergency facility and how to direct emergency workers to the location of an injured worker who can not be moved. [2009, c. 201, §3 (AMD).]

D. An employer must make reasonable efforts to limit the driving hours of any one driver in a day and to reduce driver fatigue generally. Hours of operation must also comply with the limitations set forth in 29 Code of Federal Regulations, Section 500.105. Except in an emergency, a worker who engages in reforestation or agricultural labor activities may not operate a vehicle more than 2 hours per day.

For purposes of this paragraph, "agricultural labor" has the same meaning as in section 1043, subsection 1. [2009, c. 201, §3 (AMD).]

E. A vehicle used to transport workers must be insured for at least the same minimum liability insurance as is required by the State. [2003, c. 616, §1 (NEW).]

F. Each employer shall provide to each worker and to the Department of Labor a copy of off-road driving safety standards consistent with those promoted in relevant safe driver training courses. [2003, c. 616, §1 (NEW).]

G. Each contract regarding or resulting in the employment of any worker must include a provision requiring the contractor who employs such workers to abide by this subchapter. [2009, c. 201, §3 (AMD).]

[ 2009, c. 201, §3 (AMD) .]

SECTION HISTORY
2003, c. 616, §1 (NEW). 2009, c. 201, §3 (AMD).

## §643-A. FIRST AID REQUIREMENTS

An employer must comply with the standards for first aid set forth in 29 Code of Federal Regulations, Section 1910.151 (2008). [2009, c. 201, §4 (NEW).]

SECTION HISTORY
2009, c. 201, §4 (NEW).

## §643-B. FARM LABOR CONTRACTOR REGISTRATION

Each farm labor contractor employing migrant and seasonal farm workers shall file a copy of its federal registration under the federal Migrant and Seasonal Agricultural Worker Protection Act with the bureau. The filing must include in-state contact information for the farm labor contractor or the farm labor contractor's representative. [2009, c. 201, §5 (NEW).]

SECTION HISTORY
2009, c. 201, §5 (NEW).

## §644. PROHIBITION AGAINST DISCRIMINATION AND RETALIATION

An employer or other person may not intimidate, threaten, restrain, coerce, blacklist, discharge, fail to recruit, fail to rehire or in any manner discriminate or retaliate against a worker because the worker has: [2009, c. 201, §6 (AMD).]

**1**. **Proceedings.** Made, filed, instituted, caused to be instituted or participated in any way in any proceeding under or related to this subchapter;

[ 2003, c. 616, §1 (NEW) .]

**2**. **Exercise of rights or protections.** Exercised in any way, on the worker's own behalf or on behalf of others, any right or protection afforded by this subchapter;

[ 2003, c. 616, §1 (NEW) .]

**3**. **Discussions.** Discussed any matter that is a subject of or is related in any way to this subchapter, or any other lawful matter, with any other person, including, but not limited to, that worker's employer or the employer's agent or employee; or

[ 2009, c. 201, §7 (AMD) .]

**4**. **Complaints.** Made, filed, instituted, caused to be instituted or participated in any way in any lawful complaint, lawsuit or other proceeding of any kind.

[ 2003, c. 616, §1 (NEW) .]

SECTION HISTORY
2003, c. 616, §1 (NEW). 2009, c. 201, §§6, 7 (AMD).

## §645. WAIVER OF RIGHTS PROHIBITED

Any agreement by a worker purporting to waive or modify any of the worker's rights under this subchapter is void as contrary to public policy. [2009, c. 201, §8 (AMD).]

SECTION HISTORY
2003, c. 616, §1 (NEW). 2009, c. 201, §8 (AMD).

## §646. VIOLATIONS; ENFORCEMENT

**1**. **Joint and several liability.** If more than one person or entity is an employer of the same worker or group of workers, each such person or entity is jointly and severally liable for all violations of this subchapter.

[ 2009, c. 201, §9 (AMD) .]

**2**. **Enforcement by bureau.** The bureau may inspect vehicles subject to this subchapter and used to transport workers and may enforce compliance with this subchapter in accordance with this section.

A. A duly designated officer of the bureau may enter into any structure or upon any real property in or on which a vehicle subject to this subchapter and used to transport workers is found in accordance with the process established in section 587 in order to determine compliance with this subchapter and any rules adopted to implement this subchapter. [2009, c. 201, §10 (AMD).]

B. Upon the written request of the bureau, the Department of Transportation and the Department of Public Safety shall provide any technical services that may be required by the bureau to assist with inspections and enforcement of this subchapter. [2003, c. 616, §1 (NEW).]

[ 2009, c. 201, §10 (AMD) .]

**3**. **Civil violation.** An employer who violates this subchapter or any of the rules adopted to implement this subchapter commits a civil violation for which a fine of not less than $100 nor more than $1,000 for each violation, payable to the State, may be adjudged.

A. Each day that a violation remains uncorrected following notice to the employer may be counted as a separate violation. [2003, c. 616, §1 (NEW).]

B. The bureau may direct an employer to correct any violations in a manner and within a time frame that the bureau determines appropriate to ensure compliance with this subchapter and with the rules adopted to implement this subchapter or to protect the public health. Failure to correct violations within a time frame established by the bureau constitutes a separate violation subject to fine. [2003, c. 616, §1 (NEW).]

C. The Attorney General may bring an action to seek fines under this subsection, to enjoin violations of this subchapter and for any other available remedy. [2003, c. 616, §1 (NEW).]

[ 2003, c. 616, §1 (NEW) .]

SECTION HISTORY
2003, c. 616, §1 (NEW). 2009, c. 201, §§9, 10 (AMD).

## Subchapter 3: MINIMUM WAGES

### §661. DECLARATION OF POLICY

It is the declared public policy of the State of Maine that workers employed in any occupation should receive wages sufficient to provide adequate maintenance and to protect their health, and to be fairly commensurate with the value of the services rendered.

### §662. COVERAGE

***(REPEALED)***

SECTION HISTORY
1965, c. 410, §1 (AMD). 1971, c. 525, (RP).

### §663. DEFINITIONS

Terms used in this subchapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

**1**. **Director.** "Director," the Director of the Bureau of Labor Standards;

[ 1981, c. 168, §26 (AMD) .]

**2**. **Employ.** "Employ," to suffer or permit to work;

**3**. **Employee.** "Employee," any individual employed or permitted to work by an employer but the following individuals shall be exempt from this subchapter:

A. Any individual employed in agriculture as defined in the Maine Employment Security Law and the Federal Unemployment Insurance Tax Law, except when that individual performs services for or on a farm with over 300,000 laying birds; [1975, c. 717, §5 (AMD).]

B. [2007, c. 640, §2 (RP).]

C. Those employees whose earnings are derived in whole or in part from sales commissions and whose hours and places of employment are not substantially controlled by the employer; [1967, c. 466, §1 (AMD).]

D. Any individual employed as a taxicab driver;

E. [2007, c. 640, §3 (RP).]

F. Those employees who are counselors or junior counselors or counselors-in-training at organized camps licensed under Title 22, section 2495 and those employees of organized camps and similar seasonal recreation programs not requiring such licensure that are operated as or by nonprofit organizations who are under 18 years of age; [2009, c. 120, §1 (RPR); 2009, c. 211, Pt. B, §22 (RPR).]

F-1. [1967, c. 466, §2 (RP).]

G. Any individual employed in the catching, taking, propagating, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as incident to, or in conjunction with, such fishing operations, including the going to and returning from work and including employment in the loading and unloading when performed by any such employee; [1965, c. 410, §2 (AMD).]

H. Any individual employed as a switchboard operator in a public telephone exchange which has less than 750 stations;

I. Any home worker who is not subject to any supervision or control by any person whomsoever, and who buys raw material and makes and completes any article and sells the same to any person, even though it is made according to specifications and the requirements of some single purchaser;

J. Members of the family of the employer who reside with and are dependent upon the employer; [2009, c. 529, §1 (AMD).]

K. A salaried employee who works in a bona fide executive, administrative or professional capacity and whose regular compensation, when converted to an annual rate, exceeds 3000 times the State's minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher; and [2009, c. 529, §2 (AMD).]

L. A person who is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except a prisoner who is:

(1) Employed by a private employer;

(2) Participating in a work release program;

(4) Employed in a program established under a certification issued by the United States Department of Justice under 18 United States Code, Section 1761;

(5) Employed while in a supervised community confinement program pursuant to Title 34-A, section 3036-A; or

(6) Employed while in a community confinement monitoring program pursuant to Title 30-A, section 1659-A. [2013, c. 133, §20 (AMD).]

[ 2013, c. 133, §20 (AMD) .]

**4**. **Occupation.** "Occupation," an industry, trade or business or branch thereof or class of work therein in which workers are gainfully employed;

**5**. **Wages.** "Wages" paid to any employee includes compensation paid to the employee in the form of legal tender of the United States and checks on banks convertible into cash on demand and includes the reasonable cost to the employer who furnishes the employee board or lodging. "Wages" also includes compensation paid through a direct deposit system, automated teller machine card or other means of electronic transfer as long as the employee either can make an initial withdrawal of the entire net pay without additional cost to the employee or the employee can choose another means of payment that involves no additional cost to the employee;

[ 2005, c. 89, §1 (AMD) .]

**6**. **Resort establishment.**

[ 1975, c. 623, §38 (RP) .]

**7**. **Minimum wage for firemen.** Members of municipal fire fighting departments, other than volunteer or call-departments, who are paid salaries or regular wages, are deemed to be employees within the meaning of this section and are covered by this subchapter. Firemen's wages may be paid by the municipality based

upon the average number of hours worked during any one work cycle which is not to exceed 12 weeks in duration. However, 1 1/2 times the hourly rate shall not be paid for all work done over 48 hours under this subsection;

[ 1967, c. 385, (AMD) .]

**8**. **Service employee.** "Service employee" means any employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips.

[ 2011, c. 118, §1 (AMD) .]

**9**. **Hotel.** "Hotel," a commercial establishment offering lodging to transients and often having restaurants, public rooms, shops, etc., that are available to the general public; hostelry, hotel, motor hotel, house inn, resort, tourist court, motor court, cottage colony, tavern or any other establishment relating to the innkeeping industry that refers to establishments for the lodging or entertainment of travelers.

[ 1973, c. 504, (NEW) .]

**10**. **Public employees.** "Public employees" are considered employees within the meaning of this section and include any person whose wages are paid by a state or local public employer, including the State, a county, a municipality, the University of Maine System, a school administrative unit and any other political body or its political or administrative subdivision. "Public employee" does not include any officer or official elected by popular vote or appointed to office pursuant to law for a specified term or any person defined in subsection 7.

[ 1985, c. 779, §69 (AMD) .]

**11**. **Automobile salesperson.** "Automobile salesperson" means a person who is primarily engaged in selling automobiles or trucks as an employee of an establishment primarily engaged in the business of selling these vehicles to the ultimate purchaser. "Automobile salesperson" includes a person who is primarily engaged in assisting in the financing and providing of insurance products to the ultimate purchaser.

[ 2007, c. 360, §1 (AMD) .]

**12**. **Automobile mechanic.** "Automobile mechanic" means a person who is primarily engaged in the servicing of automobiles or trucks as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, as long as the person's annual compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, except when the employee is paid by the employer on an hourly basis.

[ 2007, c. 360, §2 (AMD) .]

**13**. **Automobile parts clerk.** "Automobile parts clerk" means a person employed for the purpose of and primarily engaged in requisitioning, stocking and dispensing automobile parts as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, as long as the person's annual compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, except when the employee is paid by the employer on an hourly basis.

[ 2007, c. 360, §3 (AMD) .]

**14**. **Automobile service writer.** "Automobile service writer" means a person employed for the purpose of and primarily engaged in receiving, analyzing and referencing requests for service, repair or analysis of motor vehicles as an employee of an establishment primarily engaged in the business of selling automobiles

or trucks to the ultimate purchaser, as long as the person's annual compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, except that "automobile service writer" does not include an employee who is paid by the employer on a hourly basis.

[ 2007, c. 360, §4 (NEW) .]

**15**. **Tip.** "Tip" means a sum presented by a customer in recognition of services performed by one or more service employees, including a charge automatically included in the customer's bill. "Tip" does not include a service charge added to a customer's bill in a banquet or private club setting by agreement between the customer and employer.

[ 2011, c. 118, §2 (NEW) .]

SECTION HISTORY
1965, c. 399, §§1,2 (AMD). 1965, c. 410, §§2-4 (AMD). 1967, c. 385, (AMD). 1967, c. 466, §§1-4 (AMD). 1971, c. 620, §13 (AMD). 1971, c. 622, §87 (AMD). 1973, c. 504, (AMD). 1975, c. 48, (AMD). 1975, c. 59, §3 (AMD). 1975, c. 92, §3 (AMD). 1975, c. 623, §38 (AMD). 1975, c. 717, §5 (AMD). 1979, c. 516, §§1,2 (AMD). 1981, c. 168, §26 (AMD). 1981, c. 276, (AMD). 1985, c. 76, §1 (AMD). 1985, c. 779, §69 (AMD). 1991, c. 507, §1 (AMD). 1999, c. 465, §7 (AMD). 2005, c. 89, §1 (AMD). 2005, c. 255, §1 (AMD). 2007, c. 22, §§1, 2 (AMD). 2007, c. 360, §§1-4 (AMD). 2007, c. 367, §1 (AMD). 2007, c. 640, §§2, 3 (AMD). 2009, c. 120, §1 (AMD). 2009, c. 211, Pt. B, §22 (AMD). 2009, c. 529, §§1-3 (AMD). 2011, c. 118, §§1, 2 (AMD). 2013, c. 133, §20 (AMD).

## §664. MINIMUM WAGE; OVERTIME RATE

Except as otherwise provided in this subchapter, an employer may not employ any employee at a rate less than the rates required by this section. [1995, c. 305, §1 (RPR).]

**1**. **Minimum wage.** The minimum hourly wage is $6.50 per hour. Starting October 1, 2006, the minimum hourly wage is $6.75 per hour. Starting October 1, 2007, the minimum hourly wage is $7.00 per hour. Starting October 1, 2008, the minimum hourly wage is $7.25 per hour. Starting October 1, 2009, the minimum hourly wage is $7.50 per hour. If the highest federal minimum wage is increased in excess of the minimum wage in effect under this section, the minimum wage under this section is increased to the same amount, effective on the same date as the increase in the federal minimum wage, but in no case may the minimum wage exceed the minimum wage otherwise in effect under this section by more than $1 per hour.

[ 2007, c. 640, §4 (AMD) .]

**2**. **Tip credit.** An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed 50% of the minimum hourly wage established in this section. An employer who elects to use the tip credit must inform the affected employee in advance and must be able to show that the employee receives at least the minimum hourly wage when direct wages and the tip credit are combined. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

The tips received by a service employee become the property of the employee and may not be shared with the employer. Tips that are automatically included in the customer's bill or that are charged to a credit card must be treated like tips given to the service employee. A tip that is charged to a credit card must be paid by the employer to the employee by the next regular payday and may not be held while the employer is awaiting reimbursement from a credit card company.

[ 2011, c. 118, §3 (AMD) .]

**2-A**. **Tip pooling.** This section may not be construed to prohibit an employer from establishing a valid tip pooling arrangement among service employees that is consistent with the federal Fair Labor Standards Act and regulations made pursuant to that Act.

[ 2011, c. 118, §4 (NEW) .]

**2-B**. **Service charges.** An employer in a banquet or private club setting that adds a service charge shall notify the customer that the service charge does not represent a tip for service employees. The employer in a banquet or private club setting may use some or all of any service charge to meet its obligation to compensate all employees at the rate required by this section.

[ 2011, c. 118, §4 (NEW) .]

**3**. **Overtime rate.** An employer may not require an employee to work more than 40 hours in any one week unless 1 1/2 times the regular hourly rate is paid for all hours actually worked in excess of 40 hours in that week. The regular hourly rate includes all earnings, bonuses, commissions and other compensation that is paid or due based on actual work performed and does not include any sums excluded from the definition of "regular rate" under the Fair Labor Standards Act, 29 United States Code, Section 207(e).

The overtime provision of this section does not apply to:

A. Automobile mechanics, automobile parts clerks, automobile service writers and automobile salespersons as defined in section 663. The interpretation of these terms must be consistent with the interpretation of the same terms under federal overtime law, 29 United States Code, Section 213; [2007, c. 360, §5 (AMD).]

B. [2007, c. 640, §5 (RP).]

C. Mariners; [1995, c. 305, §1 (NEW).]

D. Public employees, except those employed by the executive or judicial branch of the State; [2003, c. 423, §1 (AMD); 2003, c. 423, §5 (AFF).]

E. [2007, c. 640, §6 (RP).]

F. The canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of:

(1) Agricultural produce;

(2) Meat and fish products; and

(3) Perishable foods.

Individuals employed, directly or indirectly, for or at an egg processing facility that has over 300,000 laying birds must be paid overtime in accordance with this subsection; and [2011, c. 681, §1 (AMD).]

G. [2001, c. 628, §3 (NEW); 2001, c. 628, §5 (AFF); T. 26, §664, sub-§3, ¶ G (RP).]

H. [2011, c. 681, §2 (RP).]

I. [2011, c. 681, §2 (RP).]

J. [2011, c. 681, §2 (RP).]

K. A driver or driver's helper who is not paid hourly and is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section, who is governed by the applicable provisions of federal law with respect to payment of overtime.

Nothing in this paragraph may be construed to limit the rights of parties to negotiate rates of pay for drivers and driver's helpers who are represented for purposes of collective bargaining by a labor organization certified by the National Labor Relations Board or who are employed by an entity that is party to a contract with the Federal Government or an agency of the Federal Government that dictates the minimum hourly rate of pay to be paid a driver or driver's helper. [2011, c. 681, §3 (NEW).]

[ 2011, c. 681, §§1-3 (AMD) .]

**4**. **Compensatory time.** To the extent permitted under the federal Fair Labor Standards Act of 1938, as amended, 29 United States Code, Section 207(o), the overtime pay requirement applicable to executive or judicial employees as described in subsection 3, paragraph D may be met through compensatory time agreements.

[ 2003, c. 423, §2 (NEW); 2003, c. 423, §5 (AFF) .]

SECTION HISTORY
1965, c. 410, §5 (AMD). 1967, c. 333, (AMD). 1967, c. 466, §5 (AMD). 1969, c. 184, (AMD). 1969, c. 356, (AMD). 1969, c. 504, §43 (AMD). 1969, c. 590, §41 (AMD). 1971, c. 78, §1 (AMD). 1971, c. 415, (AMD). 1971, c. 620, §13 (AMD). 1971, c. 622, §88 (AMD). 1973, c. 420, (AMD). 1973, c. 467, (AMD). 1973, c. 625, §171 (AMD). 1973, c. 752, §§1,2 (AMD). 1975, c. 23, (AMD). 1975, c. 352, (AMD). 1979, c. 54, (AMD). 1979, c. 516, §3 (AMD). 1983, c. 857, (AMD). 1985, c. 76, §2 (AMD). 1985, c. 576, (AMD). 1987, c. 738, §§1,2 (AMD). 1991, c. 507, §2 (AMD). 1991, c. 544, §1 (AMD). 1993, c. 233, §1 (AMD). 1993, c. 233, §3 (AFF). 1993, c. 434, §1 (AMD). 1993, c. 434, §8 (AFF). 1995, c. 305, §1 (RPR). 1995, c. 510, §1 (AMD). 1997, c. 136, §1 (AMD). 2001, c. 297, §1 (AMD). 2001, c. 336, §1 (AMD). 2001, c. 628, §§1-3 (AMD). 2001, c. 628, §5 (AFF). 2003, c. 423, §§1,2 (AMD). 2003, c. 423, §5 (AFF). 2003, c. 697, §1 (AMD). 2005, c. 578, §1 (AMD). 2007, c. 360, §5 (AMD). 2007, c. 367, §2 (AMD). 2007, c. 640, §§4-6 (AMD). 2011, c. 118, §§3, 4 (AMD). 2011, c. 681, §§1-3 (AMD). MRSA T.26, §664/3/G (AMD).

## §665. POWERS AND DUTIES OF COMMISSIONER

**1**. **Examination of records, books; copies.** Every employer subject to this subchapter shall keep a true and accurate record of the hours worked by each employee and of the wages paid, such records to be preserved by the employer for a period of at least 3 years, and shall furnish to each employee with each payment of wages a statement that clearly shows the date of the pay period, the hours, total earnings and itemized deductions. An employer making payment by direct deposit or other means of electronic transfer shall provide each employee with an accurate record of the transfer, including the date of the pay period, the hours, total earnings and itemized deductions, when the transfer is made. If the record is provided in an electronic format the employer shall provide a method by which the employee may have ready access to the information and print it without cost to the employee. The director or the director's authorized representative may, and upon written complaint shall have authority to enter the place of business or employment of any employer or employees in the State, as defined in section 663, for the purpose of examining and inspecting

such records and copy any or all of such records as the director or the director's authorized representative determines necessary or appropriate. All information received is considered confidential and may not be divulged to any other person or agency, except as may be necessary for the enforcement of this subchapter.

[ 2005, c. 89, §2 (AMD) .]

**2**. **Rules and regulations.** The director may make and promulgate from time to time, pursuant to Title 5, section 8051 et seq., such rules and regulations, not inconsistent with this subchapter, as he may deem appropriate or necessary for the proper administration and enforcement of this subchapter. The rules and regulations affecting any particular class of employees and employers shall be made and promulgated only after notice and opportunity to be heard to those employees and employers affected.

[ 1977, c. 694, §465 (RPR) .]

SECTION HISTORY
1965, c. 410, §6 (AMD). 1967, c. 466, §6 (AMD). 1971, c. 620, §13 (AMD). 1977, c. 694, §465 (AMD). 2005, c. 89, §2 (AMD).

## §666. WORKERS WITH DISABILITIES

For any employment to which the minimum wage is applicable, the director may issue to an employer for any person with a disability a special certificate authorizing the employer to pay that person a wage less than the minimum wage, based on the ability of the person to perform the duties required for that employment in comparison to the ability of a person who does not have a disability to perform the same duties. The director may hold hearings and conduct investigations as necessary for the purpose of fixing the special minimum wage for the person. A certificate is valid for 2 years from the date of issue and may be renewed by the director. The director may issue a certificate to cover several employees with disabilities as long as the employer provides documentation justifying the special minimum wage. [2011, c. 483, §1 (AMD).]

SECTION HISTORY
1971, c. 620, §13 (AMD). 2011, c. 483, §1 (AMD).

## §667. APPRENTICE

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 2013, c. 5, §1 (RP).

## §668. POSTING OF SUMMARY

Every employer subject to this subchapter shall keep a summary of this subchapter, furnished by the director, without charge, posted in a conspicuous place, in or about the premises wherein any person subject to this subchapter is employed, or in a place accessible to his employees. [1971, c. 620, §13 (AMD).]

SECTION HISTORY
1971, c. 620, §13 (AMD).

## §669. ENFORCEMENT

***(REPEALED)***

SECTION HISTORY
1965, c. 410, §7 (RP).

## §670. EMPLOYEES' REMEDIES

Any employer shall be liable to the employee or employees for the amount of unpaid minimum wages. Upon a judgment being rendered in favor of any employee or employees, in any action brought to recover unpaid wages under this subchapter, such judgment shall include, in addition to the unpaid wages adjudged to be due, an additional amount equal to such wages as liquidated damages, and costs of suit including a reasonable attorney's fee. [1965, c. 410, §8 (AMD).]

SECTION HISTORY
1965, c. 410, §8 (AMD).

## §670-A. REMEDIES FOR OVERTIME WAGE VIOLATIONS INVOLVING STATE EMPLOYEES

Notwithstanding section 670, in an action brought to recover unpaid overtime wages for an employee of the executive or judicial branch of the State, the judgment or award is limited to the unpaid overtime compensation adjudged to be due, without liquidated damages or attorney's fees. An action for unpaid overtime wages for an employee of the executive or judicial branch of the State must be brought within 2 years after the cause of action accrued, except that a cause of action arising from a willful violation of the overtime wage payment law must be commenced within 3 years after the cause of action accrued. Overtime wages are recoverable by employees of the executive or judicial branch beginning with the later of the date the cause of action accrued and the date the applicable limitations period began. [2003, c. 423, §3 (NEW); 2003, c. 423, §5 (AFF).]

SECTION HISTORY
2003, c. 423, §3 (NEW). 2003, c. 423, §5 (AFF).

## §671. PENALTIES

Any employer who violates this subchapter shall, upon conviction thereof, be punished by a fine of not less than $50 nor more than $200.

Any employer, who discharges or in any other manner discriminates against any employee because such employee makes a complaint to the director or to the county attorney concerning a violation of this subchapter, shall be punished by a fine of not less than $50 nor more than $200. [1971, c. 620, §13 (AMD).]

In the event of the violation of any of the provisions of this subchapter, the Attorney General may institute injunction proceedings in the Superior Court to enjoin further violation thereof. [1965, c. 410, §9 (AMD).]

SECTION HISTORY
1965, c. 410, §9 (AMD). 1971, c. 620, §13 (AMD).

## §672. UNFAIR CONTRACTS

No employer shall by a special contract with an employee or by any other means exempt himself from this subchapter. [1967, c. 466, §7 (NEW).]

SECTION HISTORY
1967, c. 466, §7 (NEW).

# Subchapter 3-A: SUBSTANCE ABUSE TESTING

## §681. PURPOSE; APPLICABILITY

**1**. **Purpose.** This subchapter is intended to:

A. Protect the privacy rights of individual employees in the State from undue invasion by employers through the use of substance abuse tests while allowing the use of tests when the employer has a compelling reason to administer a test; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. Ensure that, when substance abuse tests are used, proper test procedures are employed to protect the privacy rights of employees and applicants and to achieve reliable and accurate results; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF); 1989, c. 832, §1 (AMD).]

C. Ensure that an employee with a substance abuse problem receives an opportunity for rehabilitation and treatment of the disease and returns to work as quickly as possible; and [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF); 1989, c. 832, §1 (AMD).]

D. Eliminate drug use in the workplace. [1989, c. 832, §1 (NEW).]

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF); 1989, c. 832, §1 (AMD) .]

**2**. **Employer discretion.** This subchapter does not require or encourage employers to conduct substance abuse testing of employees or applicants. An employer who chooses to conduct such testing is limited by this subchapter, but may establish policies which are supplemental to and not inconsistent with this subchapter.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**3**. **Collective bargaining agreements.** This subchapter does not prevent the negotiation of collective bargaining agreements that provide greater protection to employees or applicants than is provided by this subchapter.

A labor organization with a collective bargaining agreement effective in the State may conduct a program of substance abuse testing of its members. The program may include testing of new members and periodic testing of all members. It may not include random testing of members. The program may be voluntary. The results may not be used to preclude referral to a job where testing is not required or to otherwise discipline a member. Sample collection and testing must be done in accordance with this subchapter. Approval of the Department of Labor is not required.

[ 1995, c. 324, §1 (AMD) .]

**4**. **Home rule authority preempted.** No municipality may enact any ordinance under its home rule authority regulating an employer's use of substance abuse tests.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**5**. **Contracts for work out of State.** All employment contracts subject to the laws of this State shall include an agreement that this subchapter will apply to any employer who hires employees to work outside the State.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**6**. **Medical examinations.** This subchapter does not prevent an employer from requiring or performing medical examinations of employees or applicants or from conducting medical screenings to monitor exposure to toxic or other harmful substances in the workplace, provided that these examinations are not used to avoid the restrictions of this subchapter. No such examination may include the use of any substance abuse test except in compliance with this subchapter.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**7**. **Other discipline unaffected.** This subchapter does not prevent an employer from establishing rules related to the possession or use of substances of abuse by employees, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules, except when a substance abuse test is required, requested or suggested by the employer or used as the basis for any disciplinary action.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**8**. **Nuclear power plants; federal law.** The following limitations apply to the application of this subchapter.

A. This subchapter does not apply to nuclear electrical generating facilities and their employees, including independent contractors and employees of independent contractors who are working at nuclear electrical generating facilities. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF); 1989, c. 832, §2 (RPR).]

B. [2011, c. 196, §1 (RP).]

C. This subchapter does not apply to any employer subject to a federally mandated drug and alcohol testing program, including, but not limited to, testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V, and its employees, including independent contractors and employees of independent contractors who are working for or at the facilities of an employer who is subject to such a federally mandated drug and alcohol testing program. [2011, c. 196, §1 (NEW).]

[ 2011, c. 196, §1 (AMD) .]

**9**. **Board of Licensure of Railroad Personnel; testing restricted.**

[ 1993, c. 428, §3 (RP) .]

SECTION HISTORY
1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 1989, c. 832, §§1-3 (AMD). 1993, c. 428, §3 (AMD). 1995, c. 324, §§1,2 (AMD). 2011, c. 196, §1 (AMD).

## §682. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

**1**. **Applicant.** "Applicant" means any person seeking employment from an employer. The term includes any person using an employment agency's services.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**2**. **Employee.** "Employee" means a person who is permitted, required or directed by any employer to engage in any employment for consideration of direct gain or profit. A person separated from employment while receiving a mandated benefit, including but not limited to workers' compensation, unemployment

compensation and family medical leave, is an employee for the period the person receives the benefit and for a minimum of 30 days beyond the termination of the benefit. A person separated from employment while receiving a nonmandated benefit is an employee for a minimum of 30 days beyond the separation.

A. A full-time employee is an employee who customarily works 30 hours or more each week. [1995, c. 324, §3 (NEW).]

[ 1995, c. 324, §3 (AMD) .]

**3**. **Employer.** "Employer" means any person, partnership, corporation, association or other legal entity, public or private, that employs one or more employees. The term also includes an employment agency.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**3-A**. **Medically disqualified.** "Medically disqualified" means that an employee is prohibited by a federal law or regulation, or any rules adopted by the State's Department of Public Safety that incorporate any federal laws or regulations related to substance abuse testing for motor carriers, from continuing in the employee's former employment position due to the result of a substance abuse test conducted under the federal law or regulation or the Department of Public Safety rule.

[ 1989, c. 832, §4 (NEW) .]

**4**. **Negative test result.** "Negative test result" means a test result that indicates that:

A. A substance of abuse is not present in the tested sample; or [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. A substance of abuse is present in the tested sample in a concentration below the cutoff level. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**5**. **Positive test result.** "Positive test result" means a test result that indicates the presence of a substance of abuse in the tested sample above the cutoff level of the test.

A. "Confirmed positive result" means a confirmation test result that indicates the presence of a substance of abuse above the cutoff level in the tested sample. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**6**. **Probable cause.** "Probable cause" means a reasonable ground for belief in the existence of facts that induce a person to believe that an employee may be under the influence of a substance of abuse, provided that the existence of probable cause may not be based exclusively on any of the following:

A. Information received from an anonymous informant; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. Any information tending to indicate that an employee may have possessed or used a substance of abuse off duty, except when the employee is observed possessing or ingesting any substance of abuse either while on the employer's premises or in the proximity of the employer's premises during or immediately before the employee's working hours; or [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

C. A single work-related accident. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**7**. **Substance abuse test.** "Substance abuse test" means any test procedure designed to take and analyze body fluids or materials from the body for the purpose of detecting the presence of substances of abuse. The term does not include tests designed to determine blood-alcohol concentration levels from a sample of an individual's breath.

A. "Screening test" means an initial substance abuse test performed through the use of immunoassay technology or a federally recognized substance abuse test, or a test technology of similar or greater accuracy and reliability approved by the Department of Health and Human Services under rules adopted under section 687, and that is used as a preliminary step in detecting the presence of substances of abuse.

(1) A screening test of an applicant's urine or saliva may be performed at the point of collection through the use of a noninstrumented point of collection test device approved by the federal Food and Drug Administration. Section 683, subsection 5-A governs the use of such tests. [2009, c. 133, §1 (AMD).]

B. "Confirmation test" means a 2nd substance abuse test that is used to verify the presence of a substance of abuse indicated by an initial positive screening test result and is a federally recognized substance abuse test or is performed through the use of liquid or gas chromatography-mass spectrometry. [2009, c. 133, §1 (AMD).]

C. "Federally recognized substance abuse test" means any substance abuse test recognized by the federal Food and Drug Administration as accurate and reliable through the administration's clearance or approval process. [2009, c. 133, §1 (NEW).]

[ 2009, c. 133, §1 (AMD) .]

**8**. **Substance of abuse.** "Substance of abuse" means any scheduled drug, alcohol or other drug, or any of their metabolites.

A. "Alcohol" has the same meaning as found in Title 28-A, section 2, subsection 2. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. "Drug" has the same meaning as found in Title 32, section 13702-A, subsection 11. [2007, c. 695, Pt. B, §5 (AMD).]

C. "Scheduled drug" has the same meaning as found in Title 17-A, section 1101, subsection 11. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 2007, c. 695, Pt. B, §5 (AMD) .]

SECTION HISTORY
1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 1989, c. 832, §§4,5 (AMD). 1995, c. 324, §3 (AMD). 2001, c. 556, §1 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 695, Pt. B, §5 (AMD).

## §683. TESTING PROCEDURES

No employer may require, request or suggest that any employee or applicant submit to a substance abuse test except in compliance with this section. All actions taken under a substance abuse testing program shall comply with this subchapter, rules adopted under this subchapter and the employer's written policy approved under section 686. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

**1**. **Employee assistance program required.** Before establishing any substance abuse testing program for employees, an employer with over 20 full-time employees must have a functioning employee assistance program.

A. The employer may meet this requirement by participating in a cooperative employee assistance program that serves the employees of more than one employer. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. The employee assistance program must be certified by the Department of Health and Human Services under rules adopted pursuant to section 687. The rules must ensure that the employee assistance programs have the necessary personnel, facilities and procedures to meet minimum standards of professionalism and effectiveness in assisting employees. [2011, c. 657, Pt. AA, §72 (AMD).]

[ 2011, c. 657, Pt. AA, §72 (AMD) .]

**2**. **Written policy.** Before establishing any substance abuse testing program, an employer must develop or, as required in section 684, subsection 3, paragraph C, must appoint an employee committee to develop a written policy in compliance with this subchapter providing for, at a minimum:

A. The procedure and consequences of an employee's voluntary admission of a substance abuse problem and any available assistance, including the availability and procedure of the employer's employee assistance program; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. When substance abuse testing may occur. The written policy must describe:

(1) Which positions, if any, will be subject to testing, including any positions subject to random or arbitrary testing under section 684, subsection 3. For applicant testing and probable cause testing of employees, an employer may designate that all positions are subject to testing; and

(2) The procedure to be followed in selecting employees to be tested on a random or arbitrary basis under section 684, subsection 3; [1989, c. 832, §6 (AMD).]

C. The collection of samples.

(1) The collection of any sample for use in a substance abuse test must be conducted in a medical facility and supervised by a licensed physician or nurse. A medical facility includes a first aid station located at the work site.

(2) An employer may not require an employee or applicant to remove any clothing for the purpose of collecting a urine sample, except that:

(a) An employer may require that an employee or applicant leave any personal belongings other than clothing and any unnecessary coat, jacket or similar outer garments outside the collection area; or

(b) If it is the standard practice of an off-site medical facility to require the removal of clothing when collecting a urine sample for any purpose, the physician or nurse supervising the collection of the sample in that facility may require the employee or applicant to remove their clothing.

(3) No employee or applicant may be required to provide a urine sample while being observed, directly or indirectly, by another individual.

(4) The employer may take additional actions necessary to ensure the integrity of a urine sample if the sample collector or testing laboratory determines that the sample may have been substituted, adulterated, diluted or otherwise tampered with in an attempt to influence test results. The Department of Health and Human Services shall adopt rules governing when those additional actions are justified and the scope of those actions. These rules may not permit the direct or indirect observation of the collection of a urine sample. If an employee or applicant is found to have twice substituted, adulterated, diluted or otherwise tampered with the employee's or applicant's urine sample, as determined under the rules adopted by the department, the employee or applicant is deemed to have refused to submit to a substance abuse test.

(5) If the employer proposes to use the type of screening test described in section 682, subsection 7, paragraph A, subparagraph (1), the employer's policy must include:

(a) Procedures to ensure the confidentiality of test results as required in section 685, subsection 3; and

(b) Procedures for training persons performing the test in the proper manner of collecting samples and reading results, maintaining a proper chain of custody and complying with other applicable provisions of this subchapter; [2001, c. 556, §2 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

D. The storage of samples before testing sufficient to inhibit deterioration of the sample; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

E. The chain of custody of samples sufficient to protect the sample from tampering and to verify the identity of each sample and test result; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

F. The substances of abuse to be tested for; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

G. The cutoff levels for both screening and confirmation tests at which the presence of a substance of abuse in a sample is considered a positive test result.

(1) Cutoff levels for confirmation tests for marijuana may not be lower than 15 nanograms of delta-9-tetrahydrocannabinol-9-carboxylic acid per milliliter for urine samples.

(2) The Department of Health and Human Services shall adopt rules under section 687 regulating screening and confirmation cutoff levels for other substances of abuse, including those substances tested for in blood samples under subsection 5, paragraph B, to ensure that levels are set within known tolerances of test methods and above mere trace amounts. An employer may request that the Department of Health and Human Services establish a cutoff level for any substance of abuse for which the department has not established a cutoff level.

(3) Notwithstanding subparagraphs (1) and (2), if the Department of Health and Human Services does not have established cutoff levels or procedures for any specific federally recognized substance abuse test, the minimum cutoff levels and procedures that apply are those set forth in the Federal Register, Volume 69, No. 71, sections 3.4 to 3.7 on pages 19697 and 19698; [2009, c. 133, §2 (AMD).]

H. The consequences of a confirmed positive substance abuse test result; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

I. The consequences for refusal to submit to a substance abuse test; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

J. Opportunities and procedures for rehabilitation following a confirmed positive result; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

K. A procedure under which an employee or applicant who receives a confirmed positive result may appeal and contest the accuracy of that result. The policy must include a mechanism that provides an opportunity to appeal at no cost to the appellant; and [1995, c. 324, §4 (AMD).]

L. Any other matters required by rules adopted by the Department of Labor under section 687. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

An employer must consult with the employer's employees in the development of any portion of a substance abuse testing policy under this subsection that relates to the employees. The employer is not required to consult with the employees on those portions of a policy that relate only to applicants. The employer shall send a copy of the final written policy to the Department of Labor for review under section 686. The employer may not implement the policy until the Department of Labor approves the policy. The employer

shall send a copy of any proposed change in an approved written policy to the Department of Labor for review under section 686. The employer may not implement the change until the Department of Labor approves the change.

[ 2009, c. 133, §2 (AMD) .]

**3**. **Copies to employees and applicants.** The employer shall provide each employee with a copy of the written policy approved by the Department of Labor under section 686 at least 30 days before any portion of the written policy applicable to employees takes effect. The employer shall provide each employee with a copy of any change in a written policy approved by the Department of Labor under section 686 at least 60 days before any portion of the change applicable to employees takes effect. The Department of Labor may waive the 60-day notice for the implementation of an amendment covering employees if the amendment was necessary to comply with the law or if, in the judgment of the department, the amendment promotes the purpose of the law and does not lessen the protection of an individual employee. If an employer intends to test an applicant, the employer shall provide the applicant with a copy of the written policy under subsection 2 before administering a substance abuse test to the applicant. The 30-day and 60-day notice periods provided for employees under this subsection do not apply to applicants.

[ 1995, c. 324, §5 (AMD) .]

**4**. **Consent forms prohibited.** An employer may not require, request or suggest that any employee or applicant sign or agree to any form or agreement that attempts to:

A. Absolve the employer from any potential liability arising out of the imposition of the substance abuse test; or [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. Waive an employee's or applicant's rights or eliminate or diminish an employer's obligations under this subchapter except as provided in subsection 4-A. [2007, c. 339, §1 (AMD).]

Any form or agreement prohibited by this subsection is void.

[ 2007, c. 339, §1 (AMD) .]

**4-A**. **Waivers for temporary employment.** An employment agency, as defined in section 611, may request a written waiver for a temporary placement from an individual already in its employ or on a roster of eligibility as long as the client company has an approved substance abuse testing policy and the individual has not been assigned work at the client company in the 30 days previous to the request. The waiver is only to allow a test that might not otherwise be allowed under this subchapter. The test must otherwise comply with the standards of this subchapter and the employment agency's approved policy regarding applicant testing. The agency may not take adverse action against the individual for refusal to sign a waiver.

[ 2007, c. 339, §2 (NEW) .]

**5**. **Right to obtain other samples.** At the request of the employee or applicant at the time the test sample is taken, the employer shall, at that time:

A. Segregate a portion of the sample for that person's own testing. Within 5 days after notice of the test result is given to the employee or applicant, the employee or applicant shall notify the employer of the testing laboratory selected by the employee or applicant. This laboratory must comply with the requirements of this section related to testing laboratories. When the employer receives notice of the employee or applicant's selection, the employer shall promptly send the segregated portion of the sample to the named testing laboratory, subject to the same chain of custody requirements applicable to testing of the employer's portion of the sample. The employee or applicant shall pay the costs of these tests. Payment for these tests may not be required earlier than when notice of the choice of laboratory is given to the employer; and [1995, c. 324, §6 (AMD).]

B. In the case of an employee, have a blood sample taken from the employee by a licensed physician, registered physician's assistant, registered nurse or a person certified by the Department of Health and Human Services to draw blood samples. The employer shall have this sample tested for the presence of alcohol or marijuana metabolites, if those substances are to be tested for under the employer's written policy. If the employee requests that a blood sample be taken as provided in this paragraph, the employer may not test any other sample from the employee for the presence of these substances.

(1) The Department of Health and Human Services may identify, by rules adopted under section 687, other substances of abuse for which an employee may request a blood sample be tested instead of a urine sample if the department determines that a sufficient correlation exists between the presence of the substance in an individual's blood and its effect upon the individual's performance.

(2) No employer may require, request or suggest that any employee or applicant provide a blood sample for substance abuse testing purposes nor may any employer conduct a substance abuse test upon a blood sample except as provided in this paragraph.

(3) Applicants do not have the right to require the employer to test a blood sample as provided in this paragraph. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF); 2003, c. 689, Pt. B, §6 (REV).]

[ 1995, c. 324, §6 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

**5-A**. **Point of collection screening test.** Except as provided in this subsection, all provisions of this subchapter regulating screening tests apply to noninstrumented point of collection test devices described in section 682, subsection 7, paragraph A, subparagraph (1).

A. A noninstrumented point of collection test described in section 682, subsection 7, paragraph A, subparagraph (1) may be performed at the point of collection rather than in a laboratory. Subsections 6 and 7 and subsection 8, paragraphs A to C do not apply to such screening tests. Subsection 5 applies only to a sample that results in a positive test result. [2001, c. 556, §3 (NEW).]

B. Any sample that results in a negative test result must be destroyed. Any sample that results in a postive test result must be sent to a qualified testing laboratory consistent with subsections 6 to 8 for confirmation testing. [2001, c. 556, §3 (NEW).]

C. A person who performs a point of collection screening test or a confirmation test may release the results of that test only as follows.

(1) For a point of collection screening test that results in a preliminary positive or negative test result, the person performing the test shall release the test result to the employee who is the subject of the test immediately.

(2) For a point of collection screening test that results in a preliminary positive test result, the person performing the test may not release the test result to the employer until after the result of the confirmation test has been determined.

(3) For a point of collection screening test that results in a preliminary negative test result, the person performing the test may not release the test result to the employer until after the result of a confirmation test would have been determined if one had been performed.

(4) For a confirmation test, the person performing the test shall release the result immediately to the employee who is the subject of the test and to the employer. [2005, c. 443, §1 (NEW).]

[ 2005, c. 443, §1 (AMD) .]

**6**. **Qualified testing laboratories required.** No employer may perform any substance abuse test administered to any of that employer's employees. An employer may perform screening tests administered to applicants if the employer's testing facilities comply with the requirements for testing laboratories under this subsection. Except as provided in subsection 5-A, any substance abuse test administered under this subchapter must be performed in a qualified testing laboratory that complies with this subsection.

A. [1989, c. 832, §8 (RP).]

B. The laboratory must have written testing procedures and procedures to ensure a clear chain of custody. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

C. The laboratory must demonstrate satisfactory performance in the proficiency testing program of the National Institute on Drug Abuse, the College of American Pathology or the American Association for Clinical Chemistry. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

D. The laboratory must comply with rules adopted by the Department of Health and Human Services under section 687. These rules shall ensure that:

(1) The laboratory possesses all licenses or certifications that the department finds necessary or desirable to ensure reliable and accurate test results;

(2) The laboratory follows proper quality control procedures, including, but not limited to:

(a) The use of internal quality controls during each substance abuse test conducted under this subchapter, including the use of blind samples and samples of known concentrations which are used to check the performance and calibration of testing equipment;

(b) The internal review and certification process for test results, including the qualifications of the person who performs that function in the testing laboratory; and

(c) Security measures implemented by the testing laboratory; and

(3) Other necessary and proper actions are taken to ensure reliable and accurate test results. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF); 2003, c. 689, Pt. B, §6 (REV).]

[ 2001, c. 556, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

**7**. **Testing procedure.** A testing laboratory shall perform a screening test on each sample submitted by the employer for only those substances of abuse that the employer requests to be identified. If a screening test result is negative, no further test may be conducted on that sample. If a screening test result is positive, a confirmation test shall be performed on that sample. A testing laboratory shall retain all confirmed positive samples for one year in a manner that will inhibit deterioration of the samples and allow subsequent retesting. All other samples shall be disposed of immediately after testing.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**8**. **Laboratory report of test results.** This subsection governs the reporting of test results.

A. A laboratory report of test results shall, at a minimum, state:

(1) The name of the laboratory that performed the test or tests;

(2) Any confirmed positive results on any tested sample.

(a) Unless the employee or applicant consents, test results shall not be reported in numerical or quantitative form but shall state only that the test result was positive or negative. This division does not apply if the test or the test results become the subject of any grievance procedure, administrative proceeding or civil action.

(b) A testing laboratory and the employer must ensure that an employee's unconfirmed positive screening test result cannot be determined by the employer in any manner, including, but not limited to, the method of billing the employer for the tests performed by the laboratory and the time within which results are provided to the employer. This division does not apply to test results for applicants;

(3) The sensitivity or cutoff level of the confirmation test; and

(4) Any available information concerning the margin of accuracy and precision of the test methods employed.

The report shall not disclose the presence or absence of evidence of any physical or mental condition or of any substance other than the specific substances of abuse that the employer requested to be identified. A testing laboratory shall retain records of confirmed positive results in a numerical or quantitative form for at least 2 years. [1989, c. 832, §9 (AMD).]

B. The employer shall promptly notify the employee or applicant tested of the test result. Upon request of an employee or applicant, the employer shall promptly provide a legible copy of the laboratory report to the employee or applicant. Within 3 working days after notice of a confirmed positive test result, the employee or applicant may submit information to the employer explaining or contesting the results. [1989, c. 832, §9 (AMD).]

C. The testing laboratory shall send test reports for samples segregated at an employee's or applicant's request under subsection 5, paragraph A, to both the employer and the employee or applicant tested. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

D. Every employer whose policy is approved by the Department of Labor under section 686 shall annually send to the department a compilation of the results of all substance abuse tests administered by that employer in the previous calendar year. This report shall provide separate categories for employees and applicants and shall be presented in statistical form so that no person who was tested by that employer can be identified from the report. The report shall include a separate category for any tests conducted on a random or arbitrary basis under section 684, subsection 3. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 832, §9 (AMD) .]

**9**. **Costs.** The employer shall pay the costs of all substance abuse tests which the employer requires, requests or suggests that an employee or applicant submit. Except as provided in paragraph A, the employee or applicant shall pay the costs of any additional substance abuse tests.

Costs of a substance abuse test administered at the request of an employee under subsection 5, paragraph B, shall be paid:

A. By the employer if the test results are negative for all substances of abuse tested for in the sample; and [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. By the employee if the test results in a confirmed positive result for any of the substances of abuse tested for in the sample. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**10**. **Limitation on use of tests.** An employer may administer substance abuse tests to employees or applicants only for the purpose of discovering the use of any substance of abuse likely to cause impairment of the user or the use of any scheduled drug. No employer may have substance abuse tests administered to an employee or applicant for the purpose of discovering any other information.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**11**. **Rules.** The Department of Health and Human Services shall adopt any rules under section 687 regulating substance abuse testing procedures that it finds necessary or desirable to ensure accurate and reliable substance abuse testing and to protect the privacy rights of employees and applicants.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY
1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§1-3 (AMD). 1989, c. 832, §§6-9 (AMD). 1995, c. 283, §1 (AMD). 1995, c. 324, §§4-6 (AMD). 1999, c. 199, §1 (AMD). 2001, c. 556, §§2-4 (AMD). 2003, c. 547, §1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 443, §1 (AMD). 2007, c. 339, §§1, 2 (AMD). 2009, c. 133, §2 (AMD). 2011, c. 657, Pt. AA, §72 (AMD).

## §684. IMPOSITION OF TESTS

**1**. **Testing of applicants.** An employer may require, request or suggest that an applicant submit to a substance abuse test only if:

A. The applicant has been offered employment with the employer; or [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. The applicant has been offered a position on a roster of eligibility from which applicants will be selected for employment. The number of persons on this roster of eligibility may not exceed the number of applicants hired by that employer in the preceding 6 months. [1989, c. 536, §§1, 2 (NEW); 1989, c. 536, §§2, 3 (AFF).]

The offer of employment or offer of a position on a roster of eligibility may be conditioned on the applicant receiving a negative test result.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**2**. **Probable cause testing of employees.** An employer may require, request or suggest that an employee submit to a substance abuse test if the employer has probable cause to test the employee.

A. The employee's immediate supervisor, other supervisory personnel, a licensed physician or nurse, or the employer's security personnel shall make the determination of probable cause. [1989, c. 832, §10 (AMD).]

B. The supervisor or other person must state, in writing, the facts upon which this determination is based and provide a copy of the statement to the employee. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 832, §10 (AMD) .]

**3**. **Random or arbitrary testing of employees.** In addition to testing employees on a probable cause basis under subsection 2, an employer may require, request or suggest that an employee submit to a substance abuse test on a random or arbitrary basis if:

A. The employer and the employee have bargained for provisions in a collective bargaining agreement, either before or after the effective date of this subchapter, that provide for random or arbitrary testing of employees. A random or arbitrary testing program that would result from implementation of an employer's last best offer is not considered a provision bargained for in a collective bargaining agreement for purposes of this section; [2003, c. 547, §2 (AMD).]

B. The employee works in a position the nature of which would create an unreasonable threat to the health or safety of the public or the employee's coworkers if the employee were under the influence of a substance of abuse. It is the intent of the Legislature that the requirements of this paragraph be narrowly construed; or [2003, c. 547, §2 (AMD).]

C. The employer has established a random or arbitrary testing program under this paragraph that applies to all employees, except as provided in subparagraph (4), regardless of position.

(1) An employer may establish a testing program under this paragraph only if the employer has 50 or more employees who are not covered by a collective bargaining agreement.

(2) The written policy required by section 683, subsection 2 with respect to a testing program under this paragraph must be developed by a committee of at least 10 of the employer's employees. The employer shall appoint members to the committee from a cross-section of employees who are eligible to be tested. The committee must include a medical professional who is trained in procedures for testing for substances of abuse. If no such person is employed by the employer, the employer shall obtain the services of such a person to serve as a member of the committee created under this subparagraph.

(3) The written policy developed under subparagraph (2) must also require that selection of employees for testing be performed by a person or entity not subject to the employer's influence, such as a medical review officer. Selection must be made from a list, provided by the employer, of all employees subject to testing under this paragraph. The list may not contain information that would identify the employee to the person or entity making the selection.

(4) Employees who are covered by a collective bargaining agreement are not included in testing programs pursuant to this paragraph unless they agree to be included pursuant to a collective bargaining agreement as described under paragraph A.

(5) Before initiating a testing program under this paragraph, the employer must obtain from the Department of Labor approval of the policy developed by the employee committee, as required in section 686. If the employer does not approve of the written policy developed by the employee committee, the employer may decide not to submit the policy to the department and not to establish the testing program. The employer may not change the written policy without approval of the employee committee.

(6) The employer may not discharge, suspend, demote, discipline or otherwise discriminate with regard to compensation or working conditions against an employee for participating or refusing to participate in an employee committee created pursuant to this paragraph. [2003, c. 547, §2 (NEW).]

[ 2003, c. 547, §2 (AMD) .]

**4**. **Testing while undergoing rehabilitation or treatment.** While the employee is participating in a substance abuse rehabilitation program either as a result of voluntary contact with or mandatory referral to the employer's employee assistance program or after a confirmed positive result as provided in section 685, subsection 2, paragraphs B and C, substance abuse testing may be conducted by the rehabilitation or treatment provider as required, requested or suggested by that provider.

A. Substance abuse testing conducted as part of such a rehabilitation or treatment program is not subject to the provisions of this subchapter regulating substance abuse testing. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. An employer may not require, request or suggest that any substance abuse test be administered to any employee while the employee is undergoing such rehabilitation or treatment, except as provided in subsections 2 and 3. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

C. The results of any substance abuse test administered to an employee as part of such a rehabilitation or treatment program may not be released to the employer. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**5**. **Testing upon return to work.** If an employee who has received a confirmed positive result returns to work with the same employer, whether or not the employee has participated in a rehabilitation program under section 685, subsection 2, the employer may require, request or suggest that the employee submit to a subsequent substance abuse test anytime between 90 days and one year after the date of the employee's prior test. A test may be administered under this subsection in addition to any tests conducted under subsections 2 and 3. An employer may require, request or suggest that an employee submit to a substance abuse test during the first 90 days after the date of the employee's prior test only as provided in subsections 2 and 3.

[ 1989, c. 832, §11 (NEW) .]

SECTION HISTORY
1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 1989, c. 832, §§10,11 (AMD). 2001, c. 706, §1 (AMD). 2003, c. 547, §2 (AMD).

## §685. ACTION TAKEN ON SUBSTANCE ABUSE TESTS

Action taken by an employer on the basis of a substance abuse test is limited as provided in this section. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

**1**. **Before receipt of test results.** An employer may suspend an employee with full pay and benefits or may transfer the employee to another position with no reduction in pay or benefits while awaiting an employee's test results.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**2**. **Use of confirmation test results.** This subsection governs an employer's use of confirmed positive results and an employee's or applicant's refusal to submit to a test requested or required by an employer in compliance with this subchapter.

A. Subject to any limitation of the Maine Human Rights Act or any other state law or federal law, an employer may use a confirmed positive result or refusal to submit to a test as a factor in any of the following decisions:

(1) Refusal to hire an applicant for employment or refusal to place an applicant on a roster of eligibility;

(2) Discharge of an employee;

(3) Discipline of an employee; or

(4) Change in the employee's work assignment. [1995, c. 324, §7 (AMD).]

A-1. An employer who tests a person as an applicant and employs that person prior to receiving the test result may take no action on a positive result except in accordance with the employee provisions of the employer's approved policy. [1995, c. 324, §8 (NEW).]

B. Before taking any action described in paragraph A in the case of an employee who receives an initial confirmed positive result, an employer shall provide the employee with an opportunity to participate for up to 6 months in a rehabilitation program designed to enable the employee to avoid future use of a substance of abuse and to participate in an employee assistance program, if the employer has such a program. The employer may take any action described in paragraph A if the employee receives a subsequent confirmed positive result from a test administered by the employer under this subchapter. [2003, c. 547, §3 (AMD).]

C. If the employee chooses not to participate in a rehabilitation program under this subsection, the employer may take any action described in paragraph A. If the employee chooses to participate in a rehabilitation program, the following provisions apply.

(1) If the employer has an employee assistance program that offers counseling or rehabilitation services, the employee may choose to enter that program at the employer's expense. If these services are not available from an employer's employee assistance program or if the employee chooses not to participate in that program, the employee may enter a public or private rehabilitation program.

(a) Except to the extent that costs are covered by a group health insurance plan, the costs of the public or private rehabilitation program must be equally divided between the employer and employee if the employer has more than 20 full-time employees. This requirement does not apply to municipalities or other political subdivisions of the State or to any employer when the employee is tested because of the alcohol and controlled substance testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V. If necessary, the employer shall assist in financing the cost share of the employee through a payroll deduction plan.

(b) Except to the extent that costs are covered by a group health insurance plan, an employer with 20 or fewer full-time employees, a municipality or other political subdivision of the State is not required to pay for any costs of rehabilitation or treatment under any public or private rehabilitation program. An employer is not required to pay for the costs of rehabilitation if the employee was tested because of the alcohol and controlled substance testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V.

(2) No employer may take any action described in paragraph A while an employee is participating in a rehabilitation program, except as provided in subparagraph (2-A) and except that an employer may change the employee's work assignment or suspend the employee from active duty to reduce any possible safety hazard. Except as provided in subparagraph (2-A), an employee's pay or benefits may not be reduced while an employee is participating in a rehabilitation program, provided that the employer is not required to pay the employee for periods in which the employee is unavailable for work for the purposes of rehabilitation or while the employee is medically disqualified. The employee may apply normal sick leave and vacation time, if any, for these periods.

(2-A) A rehabilitation or treatment provider shall promptly notify the employer if the employee fails to comply with the prescribed rehabilitation program before the expiration of the 6-month period provided in paragraph B. Upon receipt of this notice, the employer may take any action described in paragraph A.

(3) Except as provided in divisions (a) and (b), upon successfully completing the rehabilitation program, as determined by the rehabilitation or treatment provider after consultation with the employer, the employee is entitled to return to the employee's previous job with full pay and benefits unless conditions unrelated to the employee's previous confirmed positive result make the employee's return impossible. Reinstatement of the employee must not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part. If the rehabilitation or treatment provider determines that the employee has not successfully completed the rehabilitation program within 6 months after starting the program, the employer may take any action described in paragraph A.

(a) If the employee who has completed rehabilitation previously worked in an employment position subject to random or arbitrary testing under an employer's written policy, the employer may refuse to allow the employee to return to the previous job if the employer believes that the employee may pose an unreasonable safety hazard because of the nature of the position. The employer shall attempt to find suitable work for the employee immediately after refusing the employee's return to the previous position. No reduction may be made in the employee's previous benefits or rate of pay while awaiting reassignment to work or while

working in a position other than the previous job. The employee shall be reinstated to the previous position or to another position with an equivalent rate of pay and benefits and with no loss of seniority within 6 months after returning to work in any capacity with the employer unless the employee has received a subsequent confirmed positive result within that time from a test administered under this subchapter or unless conditions unrelated to the employee's previous confirmed positive test result make that reinstatement or reassignment impossible. Placement of the employee in suitable work and reinstatement may not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part.

(b) Notwithstanding division (a), if an employee who has successfully completed rehabilitation is medically disqualified, the employer is not required to reinstate the employee or find suitable work for the employee during the period of disqualification. The employer is not required to compensate the employee during the period of disqualification. Immediately after the employee's medical disqualification ceases, the employer's obligations under division (a) attach as if the employee had successfully completed rehabilitation on that date. [1995, c. 344, §1 (AMD).]

D. This subsection does not require an employer to take any disciplinary action against an employee who refuses to submit to a test, receives a single or repeated confirmed positive result or does not choose to participate in a rehabilitation program. This subsection is intended to set minimum opportunities for an employee with a substance abuse problem to address the problem through rehabilitation. An employer may offer additional opportunities, not otherwise in violation of this subchapter, for rehabilitation or continued employment without rehabilitation. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 2003, c. 547, §3 (AMD) .]

**3**. **Confidentiality.** This subsection governs the use of information acquired by an employer in the testing process.

A. Unless the employee or applicant consents, all information acquired by an employer in the testing process is confidential and may not be released to any person other than the employee or applicant who is tested, any necessary personnel of the employer and a provider of rehabilitation or treatment services under subsection 2, paragraph C. This paragraph does not prevent:

(1) The release of this information when required or permitted by state or federal law, including release under section 683, subsection 8, paragraph D; or

(2) The use of this information in any grievance procedure, administrative hearing or civil action relating to the imposition of the test or the use of test results. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. Notwithstanding any other law, the results of any substance abuse test required, requested or suggested by any employer may not be used in any criminal proceeding. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

SECTION HISTORY
1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 1989, c. 832, §§12,13 (AMD). 1995, c. 324, §§7,8 (AMD). 1995, c. 344, §1 (AMD). 2003, c. 547, §3 (AMD).

## §686. REVIEW OF WRITTEN POLICIES

**1**. **Review required.** The Department of Labor shall review each written policy or change to an approved policy submitted to the department by an employer under section 683, subsection 2.

A. The department shall determine if the employer's written policy or change complies with this subchapter and shall immediately notify the employer who submitted the policy or change of that determination. If the department finds that the policy or change does not comply with this subchapter, the department shall also notify the employer of the specific areas in which the policy or change is defective. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. The department may request additional information from an employer when necessary to determine whether an employment position meets the requirements of section 684, subsection 3. The department shall not approve any written policy that provides for random or arbitrary testing of any employment position that the employer has failed to demonstrate meets the requirements of section 684, subsection 3. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

C. The department shall allow for the use of any federally recognized substance abuse test. [2009, c. 133, §3 (NEW).]

[ 2009, c. 133, §3 (AMD) .]

**2**. **Review procedure.** The Department of Labor shall adopt rules under section 687 governing the procedure for reviews conducted under this section.

A. The rules must provide for notice to be given to the employees of any employer who submits a written policy or amendment applicable to employees to the department for review under this section. The employees may submit written comments to the department challenging any portion of the employer's written policy, including the proposed designation of any position under section 684, subsection 3, paragraph B. [1995, c. 324, §9 (AMD).]

B. Nothing in this section requires a formal hearing to be held concerning the submission and review of an employer's written policy. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

C. Notwithstanding Title 5, section 8003, the Maine Administrative Procedure Act, Title 5, chapter 375, does not apply to reviews conducted under this section except that all determinations by the Department of Labor under this section may be appealed as provided in Title 5, chapter 375, subchapter VII. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

D. The rules may establish model applicant policies and employee probable cause policies and provide for expedited approval and registration for employers adopting such model policies. The rules adopted under this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [1997, c. 49, §1 (NEW).]

[ 1997, c. 49, §1 (AMD) .]

SECTION HISTORY
1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 1995, c. 324, §9 (AMD). 1997, c. 49, §1 (AMD). 2009, c. 133, §3 (AMD).

## §687. RULEMAKING

**1**. **Department of Health and Human Services.** The Department of Health and Human Services shall adopt rules under the Maine Administrative Procedure Act as provided in this subchapter.

[ 2011, c. 657, Pt. AA, §73 (AMD) .]

**2**. **Department of Labor.** The Department of Labor shall adopt rules under the Maine Administrative Procedure Act, Title 5, chapter 375, as provided in this subchapter.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**3**. **Coordination; deadline.** The Department of Health and Human Services and the Department of Labor shall cooperate to ensure any necessary coordination between the rules of both departments. The Department of Health and Human Services and the Department of Labor shall adopt initial rules before December 1, 1989.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY
1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 1995, c. 283, §2 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 657, Pt. AA, §73 (AMD).

## §688. SUBSTANCE ABUSE EDUCATION

All employers shall cooperate fully with the Department of Labor, the Department of Health and Human Services, the Department of Public Safety and any other state agency in programs designed to educate employees about the dangers of substance abuse and about public and private services available to employees who have a substance abuse problem. [2011, c. 657, Pt. AA, §74 (AMD).]

SECTION HISTORY
1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 1995, c. 283, §3 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 657, Pt. AA, §74 (AMD).

## §689. VIOLATION AND REMEDIES

This section governs the enforcement of this subchapter. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

**1**. **Remedies.** Any employer who violates this subchapter is liable to any employee subjected to discipline or discharge based on that violation for:

A. An amount equal to 3 times any lost wages; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. Reinstatement of the employee to the employee's job with full benefits; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

C. Court costs; and [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

D. Reasonable attorney's fees, as set by the court. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**2**. **Breach of confidentiality.** In addition to the liability imposed under subsection 1, any person who violates section 684, subsection 4, paragraph C, or section 685, subsection 3:

A. For the first offense, is subject to a civil penalty not to exceed $1,000, payable to the affected employee, to be recovered in a civil action; and [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. For any subsequent offense, is subject to a civil penalty of $2,000, payable to the affected employee, to be recovered in a civil action. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**3**. **Harassment.** In addition to the liability imposed under subsection 1, any employer who requires or repeatedly attempts to require an employee or applicant to submit to a substance abuse test under conditions that would not justify the test under this subchapter or who without substantial justification repeatedly requires an employee to submit to a substance abuse test under section 684, subsection 3:

A. Is subject to a civil penalty not to exceed $1,000, payable to the affected employee, to be recovered in a civil action; and [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. For any subsequent offense against the same employee, is subject to a civil penalty of $2,000, payable to the affected employee, to be recovered in a civil action. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**4**. **Enforcement.** The Department of Labor or the affected employee or employees may enforce this subchapter. The department may:

A. Collect the judgment on behalf of the employee or employees; and [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. Supervise the payment of the judgment and the reinstatement of the employee or employees. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

SECTION HISTORY
1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD).

## §690. REPORT

The Department of Labor shall report to the joint standing committee of the Legislature having jurisdiction over labor matters on March 1, 1990, and annually on that date thereafter. This report shall: [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

**1**. **List of employers.** List those employers whose substance abuse testing policies have been approved by the Department of Labor under section 686;

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**2**. **Persons tested.** Indicate whether those employers are testing applicants or employees, or both;

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**3**. **Random or arbitrary testing.** Indicate those employers whose substance abuse testing policies permit random or arbitrary testing under section 684, subsection 3, and describe the employment positions subject to such random or arbitrary testing;

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**4**. **Results.** Provide statistical data relating to the reports received from employers indicating the number of substance abuse tests administered by those employers in the previous calendar year and the results of those tests; and

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**5**. **Description.** Briefly describe the general scope and practice of workplace substance abuse testing in the State.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

SECTION HISTORY
1989, c. 536, §§1, 2 (NEW). 1989, c. 604, §§2, 3 (AFF).

## Subchapter 4: EMPLOYMENT OF WOMEN AND CHILDREN

## Article 1: PROVISIONS COMMON TO FEMALES AND MINORS

### §701. POSTING OF NOTICE OF HOURS OF LABOR

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1975, c. 701, §11 (RPR). 1989, c. 738, §1 (AMD). 2001, c. 242, §2 (RP).

### §701-A. APPLICATION OF SUBCHAPTER

This subchapter applies to employment by all private and public employers, including the State and its political subdivisions, except with respect to service in the National Guard and as otherwise specifically provided. [2003, c. 10, §1 (NEW).]

SECTION HISTORY
2003, c. 10, §1 (NEW).

### §702. RECORD OF WORK HOURS OF MINORS UNDER 18 YEARS OF AGE

Every employer shall keep a time book or record for every minor under 18 years of age employed in any occupation, except the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, or household work, stating the number of hours worked by each minor under 18 years of age on each day of the week. The time book or record must be open at all reasonable hours to the inspection of the director, a director's deputy or any authorized agent of the bureau. Any employer who fails to keep the record required by this section or makes any false entry to the record, or refuses to exhibit the time book or record or makes any false statement to the director, a director's deputy or any authorized agent of the bureau in reply to any question in carrying out section 42-B and this section is liable for a violation of this section and section 42-B. [2001, c. 242, §3 (AMD).]

SECTION HISTORY
1971, c. 620, §13 (AMD). 1975, c. 701, §12 (RPR). 1979, c. 468, §1 (AMD). 1991, c. 544, §2 (AMD). 2001, c. 242, §3 (AMD). RR 2005, c. 1, §11 (COR).

### §703. EXEMPTIONS FOR PERISHABLE GOODS

***(REPEALED)***

SECTION HISTORY
1975, c. 701, §13 (RP).

## §704. PENALTY FOR EMPLOYERS

**1**. **Strict liability.** An employer who violates either section 42-B or 702 is subject to the following forfeiture or civil penalty, payable to the State and recoverable in a civil action:

A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a forfeiture of not less than $50 nor more than $250; [1991, c. 544, §3 (NEW).]

B. For a 2nd violation occurring within 3 years of a prior adjudication, a forfeiture of not less than $100 nor more than $1,000; or [1991, c. 544, §3 (NEW).]

C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudications, a forfeiture or penalty of not less than $250 nor more than $2,500. [1991, c. 544, §3 (NEW).]

[ 2001, c. 242, §4 (AMD) .]

**2**. **Adjudications.** As used in this section, a prior adjudication includes a consent decree that contains an admission of a violation. The dates of prior adjudications for any violation of sections 42-B and 702 or a combination must precede the commission of the violation being enhanced, although prior adjudications involving a combination may have occurred on the same day. The date of any adjudication is the date the forfeiture or penalty is adjudged or the consent decree allowed, even though an appeal was taken.

[ 2001, c. 242, §4 (AMD) .]

**3**. **Subsequent offenses.**

[ 1991, c. 544, §3 (RP) .]

SECTION HISTORY
1981, c. 470, §A141 (NEW). 1981, c. 698, §115 (AMD). 1991, c. 544, §3 (RPR). 2001, c. 242, §4 (AMD).

# Article 2: FEMALES

## §731. HOURS OF EMPLOYMENT FOR FEMALES; 9 HOURS A DAY

***(REPEALED)***

SECTION HISTORY
1975, c. 701, §14 (RP).

## §732. -- SIX AND ONE-HALF HOURS CONTINUOUS MAXIMUM

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1975, c. 701, §14 (RP).

## §733. -- FIFTY-FOUR HOURS A WEEK

***(REPEALED)***

SECTION HISTORY
1975, c. 701, §14 (RP).

## §734. -- FIFTY HOURS A WEEK IN CERTAIN PLACES

***(REPEALED)***

SECTION HISTORY
1975, c. 701, §14 (RP).

## §735. SEATS FOR FEMALE EMPLOYEES

***(REPEALED)***

SECTION HISTORY
1975, c. 701, §14 (RP).

## §736. APPLICATION OF PROVISIONS

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1975, c. 701, §14 (RP).

## §737. -- WAR AND OTHER EMERGENCIES

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1975, c. 701, §14 (RP).

## §738. PENALTY FOR EMPLOYERS

***(REPEALED)***

SECTION HISTORY
1975, c. 701, §15 (AMD). 1981, c. 407, (AMD). 1981, c. 470, §A142 (RP). 1981, c. 698, §116 (RP).

# Article 3: MINORS

## §771. MINORS UNDER 14 YEARS OF AGE

A minor under 14 years of age may not be employed, permitted or suffered to work in, about or in connection with agriculture, except for the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, any eating place, automatic laundries, retail establishment where frozen dairy products are manufactured on the premises, sporting or overnight camp, mercantile establishment or in outdoor occupations on the grounds of a hotel, and a minor between the ages of 14 and 16 years may not be so employed when the distance between the work place and the home of the minor, or any other factor, necessitates the minor's remaining away from home overnight. This section does not apply to any such minor who is employed directly by, with or under the supervision of either or both of the minor's parents; or to any such minor employed in school lunch programs, if limited to serving food and cleaning up dining rooms. [1991, c. 544, §4 (AMD).]

SECTION HISTORY
1975, c. 238, §1 (AMD). 1979, c. 468, §2 (AMD). 1991, c. 544, §4 (AMD).

## §772. MINORS UNDER 18 YEARS OF AGE; HAZARDOUS EMPLOYMENT

**1**. **Prohibition against certain employment.** A minor under 18 years of age may not be employed in any capacity that the director determines to be hazardous, dangerous to life or limbs or injurious to the minor's health or morals.

[ 2003, c. 59, §1 (NEW) .]

**2**. **Rules; list of occupations.** The director shall adopt rules to develop and maintain a list of occupations not suitable for employment of a minor. The rules must conform as far as practicable to the child labor provisions of the federal Fair Labor Standards Act of 1938, 29 United States Code, Section 212 and any associated regulations. The rules must also contain provisions prohibiting the employment of minors in places having nude entertainment and in registered dispensaries of marijuana for medical use authorized under Title 22, chapter 558-C.

[ 2009, c. 631, §47 (AMD); 2009, c. 631, §51 (AFF) .]

**3**. **Rules relating to confined spaces and height.** The director shall adopt rules prohibiting a minor under 18 years of age from working in confined spaces or at a designated height when regulations of the federal Occupational Safety and Health Administration, adopted under the general industry standards, 29 Code of Federal Regulations, Part 1910, require special precautions or procedures for such work. The rules must provide exceptions to the prohibition in specific exceptional circumstances, such as work required for public safety.

[ 2003, c. 59, §1 (NEW) .]

**4**. **Rules are routine technical.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2003, c. 59, §1 (NEW) .]

**5**. **Application.** This section does not apply to minors in public and approved private schools where mechanical equipment is installed and operated primarily for purposes of instruction or minors who are volunteer participants in a career-oriented law enforcement program and perform traffic control duties at civic events pursuant to section 786.

[ 2013, c. 142, §1 (AMD) .]

SECTION HISTORY
1971, c. 620, §13 (AMD). 1979, c. 663, §159 (AMD). 1997, c. 597, §1 (AMD). 1999, c. 30, §1 (AMD). 2003, c. 59, §1 (RPR). 2009, c. 631, §47 (AMD). 2009, c. 631, §51 (AFF). 2013, c. 142, §1 (AMD).

## §773. MINORS UNDER 16; PROHIBITED IN CERTAIN PLACES

A minor under 16 years of age may not be employed, permitted or suffered to work in, about or in connection with any manufacturing or mechanical establishment, hotel, rooming house, laundry, except those commonly known as automatic laundries, dry cleaning establishments, bakery, bowling alley, poolroom, commercial places of amusement, including traveling shows and circuses, or in any theater or moving picture house or in conjunction with an amusement, game or show that allows or conducts betting. The provisions of this section pertaining to theaters do not apply to minors under 16 years of age who are employed or in training as theatrical actors or film actors. This section does not prohibit a minor under 16 years of age from performing work for a nonprofit organization that preserves film and other moving images and provides education and research opportunities for the public or for a theater that is operated by such an organization as an integral part of its mission. [2001, c. 43, §1 (AMD).]

The provisions of this section pertaining to manufacturing establishments shall not apply to minors under 16 years of age who are employed in retail establishments where any frozen dairy product or frozen dairy product mix or related food product is manufactured on the premises, regardless of trade name or brand or coined name.

The provisions of this section pertaining to hotels do not apply to minors under 16 years of age who are employed in outdoor occupations on the grounds of a hotel or to minors 15 years of age who are employed in kitchens, dining rooms, lobbies and offices of a hotel. Minors 15 years of age are expressly prohibited from working in an area not listed as permitted and are expressly prohibited from performing room service, making deliveries of any sort to the hotel rooms or entering the hallways to those rooms. [1997, c. 347, §2 (AMD).]

The provisions of this section pertaining to manufacturing and mechanical establishments shall not apply to minors under 16 years of age who are employed on the grounds of a manufacturing or mechanical establishment, but who are assigned nonhazardous work which is performed outside of any building in which manufacturing or mechanical operations are undertaken. [1987, c. 401, (NEW).]

The provisions of this section pertaining to manufacturing or mechanical establishments, laundries, dry cleaning establishments and bakeries shall not apply to minors under 16 years of age who are employed in retail sales, customer service operations or office work for these establishments, provided that retail, customer service or office areas are in a separate room. [1987, c. 665, §1 (NEW).]

Notwithstanding other provisions of this section, a minor under 16 years of age may be employed at a commercial place of amusement operating at a permanent location, except that minors under 16 years of age may not be employed at games of chance as defined in Title 17, chapter 62 or hazardous occupations as determined by the director. [2009, c. 487, Pt. B, §12 (AMD).]

SECTION HISTORY
1975, c. 238, §2 (AMD). 1987, c. 401, (AMD). 1987, c. 665, §1 (AMD). 1989, c. 520, §1 (AMD). 1993, c. 434, §2 (AMD). 1997, c. 347, §§2,3 (AMD). 1997, c. 353, §§1,2 (AMD). 2001, c. 43, §1 (AMD). 2009, c. 487, Pt. B, §12 (AMD).

## §774. HOURS OF EMPLOYMENT

**1**. **Minors under 18 years of age.** A minor under 18 years of age, enrolled in school, may not be employed as follows:

A. More than 50 hours in any week when the minor's school is not in session; [2003, c. 53, §1 (AMD).]

B. More than 24 hours in any week when the minor's school is in session. In addition, the maximum weekly hours a minor may work is 50 hours during any week that the approved school calendar for the minor's school is less than 3 days or during the first or last week of the school calendar, regardless of how many days the minor's school is in session for the week. If requested, a school must provide verification of its closings to the minor's employer or the Department of Labor; [2011, c. 174, §1 (AMD).]

C. More than 10 hours in any day when the minor's school is not in session; [2003, c. 53, §1 (AMD).]

D. More than 6 hours in any day when the minor's school is in session, except that the minor may work up to 8 hours on the last scheduled day of the school week; [2011, c. 174, §2 (AMD).]

E. More than 6 consecutive days; [1993, c. 434, §3 (AMD).]

F. After 10:15 p.m. on a day preceding a day on which the minor's school is in session or after 12 midnight on a day that does not precede such a school day; or [2011, c. 174, §3 (AMD).]

G. Before 7 a.m. on a day on which the minor's school is in session or before 5 a.m. on any other day. [2003, c. 53, §1 (AMD).]

[ 2011, c. 174, §§1-3 (AMD) .]

**2**. **Minors under 16 years of age.** A minor under 16 years of age may not be employed as follows:

A. More than 40 hours in any week when school is not in session; [1991, c. 544, §5 (NEW).]

B. More than 18 hours in any week when school is in session; [1991, c. 544, §5 (NEW).]

C. More than 8 hours in any day when school is not in session; [1991, c. 544, §5 (NEW).]

D. More than 3 hours in any day when school is in session; [1991, c. 544, §5 (NEW).]

E. More than 6 consecutive days; or [1991, c. 544, §5 (NEW).]

F. Between the hours of 7 p.m. and 7 a.m. except during summer vacation, when that minor may not work between the hours of 9 p.m. and 7 a.m. [1993, c. 434, §4 (AMD).]

[ 1993, c. 434, §4 (AMD) .]

**3**. **Employment during hours school in session.** A minor under 17 years of age may not be employed during the hours that the public schools of the town or city in which the minor resides are in session.

A. This subsection does not apply to:

(1) A minor who has been excused from attendance by school officials in accordance with Title 20-A, section 5001-A, subsection 2 or subsection 3, except that a minor who has been excused in accordance with subsection 3 may not be employed during the hours that the minor's school or approved home instruction program is in session;

(2) A student in an alternative education plan that includes a work experience component;

(3) A student in an approved vocational cooperative education program; or

(4) A student who is granted permission for an early school release by the school principal. [1991, c. 713, §2 (AMD).]

The hours worked by a student in an alternative education plan or in an approved vocational cooperative education program may not be included in determining the student's total hours of permitted employment under subsection 1 and subsection 2.

[ 1991, c. 713, §2 (AMD) .]

**4**. **Exemptions.** Work performed in the planting, cultivating or harvesting of field crops or other agricultural employment, including the initial processing of farm crops, not in direct contact with hazardous machinery or hazardous substances, work performed as an employed or in-training theatrical actor or film actor or work performed as a summer camp employee in a youth camp licensed under Title 22, section 2495 is exempt from this section, provided a minor under 16 years of age has been excused by the local superintendent of schools in accordance with the policy established by the Commissioner of Education and the Director of the Bureau of Labor Standards. Work performed in the taking or catching of lobsters, fish or other marine organisms by any methods or means, or in the operating of ferries or excursion boats, is exempt from subsection 1, paragraphs A and C.

[ 2009, c. 211, Pt. B, §23 (AMD) .]

**5**. **Application.** This section does not apply to a person who holds a high school diploma or a high school equivalency certificate issued pursuant to Title 20-A, section 257 or to a minor emancipated pursuant to Title 15, section 3506-A.

[ 1991, c. 713, §4 (NEW) .]

**6**. **In session.** School is considered in session if the students are required to be in attendance by the school board pursuant to Title 20-A, chapter 211.

[ 1997, c. 131, §2 (NEW) .]

SECTION HISTORY
1971, c. 620, §13 (AMD). 1973, c. 571, §59 (AMD). 1975, c. 59, §3 (AMD). 1979, c. 468, §3 (AMD). 1981, c. 310, (AMD). 1989, c. 700, §A102 (AMD). RR 1991, c. 1, §34 (COR). 1991, c. 544, §5 (RPR). 1991, c. 713, §§1-4 (AMD). 1993, c. 434, §§3-5 (AMD). 1997, c. 131, §§1,2 (AMD). 2003, c. 53, §1 (AMD). 2009, c. 211, Pt. B, §23 (AMD). 2011, c. 174, §§1-3 (AMD).

## §775. WORK PERMITS

**1**. **Work permit authority.** A minor under 16 years of age may not be employed without a work permit signed by the superintendent of schools of the school administrative unit in which the minor resides and issued to the minor by the bureau. The superintendent may designate a school official to sign a work permit and that official is directly responsible to the superintendent for this activity.

[ 2001, c. 398, Pt. A, §1 (AMD) .]

**2**. **Conditions for signature.** The superintendent shall sign a permit in the following circumstances:

A. If the school is in session or the minor is attending summer school, the minor must be enrolled in school, not truant, not under suspension and passing a majority of courses during the current grading period. Upon request of the minor, the superintendent may waive the requirements for one grading period if, in the opinion of the superintendent, there are extenuating circumstances or if imposing the requirements would create an undue hardship for the minor; [2011, c. 614, §21 (AMD).]

B. If school is not in session, the minor must furnish to the superintendent a certificate signed by the principal of the school last attended showing that the minor has satisfactorily completed kindergarten to grade 8 in the public schools or their equivalent. If the certificate can not be obtained, the superintendent shall examine the minor to determine whether the minor meets these educational standards; [1991, c. 713, §5 (AMD); 1991, c. 713, §9 (AFF).]

C. If the minor has been granted an exception to compulsory education under Title 20-A, section 5001-A, subsection 2, the minor must only submit proof of age as provided in subsection 3; or [1991, c. 713, §5 (AMD); 1991, c. 713, §9 (AFF).]

D. If school is in session, the superintendent may have signed only one work permit for the minor at any given time. The superintendent may sign 2 work permits for the minor for the summer vacation period. [2001, c. 398, Pt. A, §1 (AMD).]

[ 2011, c. 614, §21 (AMD) .]

**3**. **Proof of age.** The superintendent may issue a permit only upon receiving and examining satisfactory evidence of the minor's age. Satisfactory evidence consists of a certified copy of the minor's birth certificate or baptismal record, a passport showing the date of birth or other documentary evidence of age satisfactory to the superintendent and approved by the director. The superintendent may require, in doubtful cases, a certificate signed by a physician appointed by the school board, stating that the minor has been examined and, in that physician's opinion, has reached the normal development of a minor of the same age and is in sufficiently sound health and physically able to perform the work the minor intends to do.

[ 2001, c. 398, Pt. A, §1 (AMD) .]

**3-A**. **Issuance of work permit.** The director or the director's agent shall issue the work permit to the minor upon verification:

A. Of the proper approval by the superintendent or other designated school official; and [2001, c. 398, Pt. A, §1 (NEW).]

B. That the employment conforms with the provisions of this subchapter. [2001, c. 398, Pt. A, §1 (NEW).]

The superintendent's office shall distribute the work permit to the minor. The work permit is valid only for the employer and positions listed on the permit as issued by the bureau.

[ 2001, c. 398, Pt. A, §1 (NEW) .]

**4**. **Conditions for revocation.** The superintendent may revoke the work permit issued to a minor by the bureau if the superintendent determines that the minor has not maintained the conditions for issuance of the work permit under subsection 2, paragraph A. The superintendent shall revoke 2nd work permits at the end of the summer vacation in accordance with the limits imposed by subsection 2, paragraph D. The superintendent shall notify the Director of the Bureau of Labor Standards and the minor's employer in writing upon revoking a minor's work permit. The revocation is effective upon receipt by the employer of the superintendent's notice.

[ 2001, c. 398, Pt. A, §1 (AMD) .]

**5**. **Permit on file.** The employer shall keep all work permits issued for the employer's minor employees on file and accessible to any attendance officer, factory inspector or other authorized officer charged with the enforcement of this subchapter.

[ 1991, c. 544, §5 (NEW) .]

**6**. **Exception.** This section does not apply to minors engaged in work performed in the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances or to minors engaged in household work. Minors who are participants in summer youth employment and training programs funded by the Department of Labor are exempt from obtaining individual permits as long as the program employing the minor has submitted a master permit as developed by the director under section 777.

[ 1993, c. 527, §1 (AMD) .]

SECTION HISTORY
1965, c. 272, §3 (AMD). 1971, c. 620, §13 (AMD). 1973, c. 571, §60 (AMD). 1975, c. 59, §3 (AMD). 1979, c. 468, §4 (AMD). 1989, c. 700, §A103 (AMD). 1991, c. 544, §5 (RPR). 1991, c. 713, §§5-7 (AMD). 1991, c. 713, §9 (AFF). 1993, c. 527, §1 (AMD). 2001, c. 398, §A1 (AMD). 2011, c. 614, §21 (AMD).

## §776. -- PART TIME AND VACATION WORK

***(REPEALED)***

SECTION HISTORY
1991, c. 544, §6 (RP).

## §777. BLANKS FURNISHED; FILING OF TRIPLICATE PERMITS; SURRENDER AND CANCELLATION OF PERMITS

The blank work permit required by section 775 must be formulated by the director and furnished by the director to the persons authorized to sign work permits. The forms of the permits must be approved by the Attorney General. Every work permit must be made out in triplicate. All triplicates, accompanied by the original papers on which the permits were signed, must be forwarded to the bureau by the officer signing the permits, within 24 hours of the time the permit was signed. The bureau shall examine the papers and promptly return them to the officer who sent them after validating the copies and retaining one copy for bureau files. The officer may then return to the minor all papers filed in proof of age. Whenever there is reason to believe that a work permit was improperly signed, the director, deputy director or agent shall notify the local superintendent of schools of the place in which the certificate was signed. The local superintendent shall cancel the permit when directed to do so by the director. The director may develop an electronic transmittal system to fulfill these requirements. [2001, c. 398, Pt. A, §2 (AMD).]

The director shall develop a master permit system for participants in summer youth employment and training programs funded by the Department of Labor. The master permit eliminates the need for prior approval by the director or the superintendent of schools. A minor on a master permit may be removed from the master permit for the same reasons and in the same manner as applicable to an individual work permit. [1993, c. 527, §2 (NEW).]

SECTION HISTORY
1971, c. 620, §13 (AMD). 1991, c. 544, §7 (AMD). 1993, c. 527, §2 (AMD). 2001, c. 398, §A2 (AMD).

## §778. BLANK EMPLOYMENT CERTIFICATES PREPARED; NOTICE WHEN EMPLOYMENT TERMINATED

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1991, c. 544, §8 (RP).

## §779. RECORD OF AGE RECEIVED AS EVIDENCE

Any record of age, as provided under section 775 to determine whether or not a work permit may be issued to any child, shall be received as evidence of the age of such child in any prosecution under this subchapter.

## §780. WORK PERMIT CONCLUSIVE FOR EMPLOYER; DOCUMENTARY EVIDENCE OF AGE

A work permit in regular form signed by a duly authorized officer, for all minors under 16 years of age, is conclusive evidence of age and educational attainment, in behalf of the employer of any minor, upon any prosecution for violation of the law relating to the employment of minors. An inspector of factories, attendance officer or other officer charged with the enforcement of this subchapter may make demand on any employer in or about whose place or establishment a minor apparently under the age of 16 years is employed, permitted or suffered to work, that such employer shall either furnish the inspector within 10 days documentary evidence of age as specified in section 775, or shall cease to employ, permit or suffer such minor to work in such place or establishment. [1991, c. 544, §9 (AMD).]

SECTION HISTORY
1991, c. 544, §9 (AMD).

# §781. PENALTIES

**1**. **Strict liability.** An employer who employs, permits or suffers any minor to be employed or to work in violation of this article or Title 20-A, section 5054 is subject to the following forfeiture or civil penalty, payable to the State and recoverable in a civil action:

A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a forfeiture or penalty of not less than $250 nor more than $5,000; [1991, c. 544, §10 (NEW).]

B. For a 2nd violation occurring within 3 years of a prior adjudication, a forfeiture or penalty of not less than $500 nor more than $5,000; or [1991, c. 544, §10 (NEW).]

C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudications, a penalty of not less than $2,000 nor more than $10,000. [2009, c. 2, §72 (COR).]

[ 2009, c. 2, §72 (COR) .]

**1-A**. **De minimis violations of section 774.** Notwithstanding subsection 1, absent a finding that reasonably suggests a pattern of knowing and intentional conduct, the bureau may disregard the following violations of section 774:

A. A violation of the limits on the time that work may begin or end under section 774, subsection 1, paragraph F or G or section 774, subsection 2, paragraph F, as long as the violation is no greater than 10 minutes per day; [2001, c. 1, §39 (COR).]

B. A violation of the number of hours a minor may work in any day under section 774, subsection 1, paragraph B, C or D or section 774, subsection 2, paragraph C or D, as long as the violation is not greater than 10 minutes per day; and [2001, c. 46, §1 (NEW).]

C. A violation of the number of hours worked in a week under section 774, subsection 1, paragraph A or B or section 774, subsection 2, paragraph A or B, as long as the violation is not greater than 50 minutes in a week. [2001, c. 46, §1 (NEW).]

[ 2001, c. 1, §39 (COR) .]

**2**. **Intentional or knowing violation of section 771, 772, or 773.** An employer who intentionally or knowingly employs, permits or suffers any minor to be employed or to work in violation of section 771, 772 or 773 is subject to the following forfeiture or civil penalty, payable to the State and recoverable in a civil action:

A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a forfeiture or penalty of not less than $500; [1991, c. 544, §10 (NEW).]

B. For a 2nd violation occurring within 3 years of a prior adjudication, a penalty of not less than $5,000 nor more than $20,000; or [1991, c. 544, §10 (NEW).]

C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudications, a penalty of not less than $10,000 nor more than $50,000. [1991, c. 544, §10 (NEW).]

[ 1991, c. 544, §10 (NEW) .]

**3**. **Adjudications.** As used in this section, a prior adjudication includes a consent decree that contains an admission of a violation. The dates of prior adjudications for any violation or a combination of violations must precede the commission of the violation being enhanced, although prior adjudications involving a combination may have occurred on the same day. The date of any adjudication is the date the forfeiture or penalty is adjudged or the consent decree allowed, even though an appeal was taken.

[ 1991, c. 544, §10 (NEW) .]

SECTION HISTORY

1987, c. 665, §2 (AMD). 1989, c. 415, §33 (AMD). 1991, c. 544, §10 (RPR). RR 2001, c. 1, §39 (COR). 2001, c. 46, §1 (AMD). RR 2009, c. 2, §72 (COR).

## §782. PARENT, GUARDIAN OR CUSTODIAN

**1**. **Permitting or allowing child to work.** A person who has control over a child as parent, guardian, custodian or otherwise may not permit or allow the child to be employed or to work in violation of this subchapter.

[ 2003, c. 452, Pt. O, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**2**. **Work permit containing false information.** A person may not present, or permit or allow a child over which the person has control to present, to an employer, owner or superintendent or an overseer or agent as required under section 775 a work permit containing a false statement as to the date of birth or age of the child, knowing it to be false.

[ 2003, c. 452, Pt. O, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**3**. **Penalties.** A person who violates this section commits a civil violation for which a fine of not less than $10 and not more than $50 for each offense may be adjudged.

[ 2003, c. 452, Pt. O, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
2003, c. 452, §X2 (AFF). 2003, c. 452, §O2 (RPR).

## §783. -- FAILURE TO PERFORM DUTIES OF OFFICE

Whoever, being authorized to issue a work permit, knowingly fails to perform the duties of his office as required by this subchapter shall be punished by a fine of not less than $25 nor more than $50, for each offense.

## §784. -- CERTIFICATION OF FALSE STATEMENTS

Whoever, being authorized to sign the work permit, or whoever, signing any certified copy of a town clerk's record of birth, or certified copy of a child's baptismal record or a physician's certificate, knowingly certifies to any false statement therein shall be punished by a fine of not less than $25 nor more than $50, for each offense.

## §785. RULEMAKING

The Director of the Bureau of Labor Standards may adopt rules pursuant to Title 5, chapter 375, subchapter II that are consistent with this subchapter and considered appropriate or necessary for the proper administration and enforcement of this subchapter. [1993, c. 434, §6 (NEW).]

SECTION HISTORY
1993, c. 434, §6 (NEW).

## §786. TRAFFIC CONTROL DUTIES

**1**. **Traffic control duties permitted.** Notwithstanding any other provision of this article, a minor who is 14 years of age or older and is a volunteer participant in a career-oriented law enforcement program may perform traffic control duties in accordance with this section.

[ 2013, c. 142, §2 (NEW) .]

**2**. **Training.** A minor may not perform traffic control duties under this section until the minor has received traffic control training in accordance with the requirements of the supervising law enforcement agency. Proof of the minor's successful completion of the training must be maintained by the law enforcement agency.

[ 2013, c. 142, §2 (NEW) .]

**3**. **Supervision.** A minor may perform traffic control duties only under direct supervision of a law enforcement officer as part of a career-oriented law enforcement program. This supervision must:

A. Be from a close distance so that the officer does not become distracted or perform other duties; and [2013, c. 142, §2 (NEW).]

B. Include means of radio contact in the event that the minor needs to contact another officer for assistance. [2013, c. 142, §2 (NEW).]

[ 2013, c. 142, §2 (NEW) .]

**4**. **Limitations on events.** A minor may perform traffic control duties only at civic events, fair parking lots, parades, walks, foot races, car shows and charity events.

[ 2013, c. 142, §2 (NEW) .]

**5**. **Limitations on locations.** A minor may not:

A. Direct traffic or pedestrians on busy roadways or thoroughfares; [2013, c. 142, §2 (NEW).]

B. Assist in traffic control at places of heightened danger such as traffic stops or roadblocks; [2013, c. 142, §2 (NEW).]

C. Direct traffic in conjunction with crowd control or riot control; [2013, c. 142, §2 (NEW).]

D. Collect donations at a traffic light; [2013, c. 142, §2 (NEW).]

E. Direct traffic at funeral processions; or [2013, c. 142, §2 (NEW).]

F. Direct traffic at the scene of an emergency. [2013, c. 142, §2 (NEW).]

[ 2013, c. 142, §2 (NEW) .]

**6**. **Night activities prohibited.** A minor may perform the activities authorized under this section only during the period from sunrise to sunset.

[ 2013, c. 142, §2 (NEW) .]

SECTION HISTORY
2013, c. 142, §2 (NEW).

## Subchapter 4-A: EMPLOYMENT OF THE HANDICAPPED

### §791. LEGAL IDENTITY

***(REPEALED)***

SECTION HISTORY
1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

### §792. MEMBERSHIP REPRESENTATION

***(REPEALED)***

SECTION HISTORY
1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

## §793. COMMITTEE TENURES

***(REPEALED)***

SECTION HISTORY
1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

## §794. NONPARTISAN STATUS

***(REPEALED)***

SECTION HISTORY
1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

## §795. COMMITTEE OFFICERS

***(REPEALED)***

SECTION HISTORY
1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

## §796. PRIMARY DUTIES

***(REPEALED)***

SECTION HISTORY
1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

## §797. AUTHORIZATION

***(REPEALED)***

SECTION HISTORY
1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

## §798. EXPENSES OF COMMITTEE MEMBERS; PAYMENT; OFFICE

***(REPEALED)***

SECTION HISTORY
1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

## §799. COMMITTEE

***(REPEALED)***

SECTION HISTORY
1983, c. 176, §A9 (NEW). 1985, c. 295, §38 (AMD). 1989, c. 49, §4 (AMD). 1997, c. 410, §5 (RP).

## §800. MEMBERSHIP

***(REPEALED)***

SECTION HISTORY
1983, c. 176, §A9 (NEW). 1983, c. 819, §A57 (AMD). 1993, c. 600, §A20 (AMD). 1997, c. 410, §6 (RP).

## §801. POWERS AND DUTIES

***(REPEALED)***

SECTION HISTORY
1983, c. 176, §A9 (NEW). 1989, c. 49, §5 (AMD). 1993, c. 600, §§A21,22 (AMD). 1997, c. 410, §7 (RP).

## §802. ADMINISTRATIVE AUTHORITY

***(REPEALED)***

SECTION HISTORY
1983, c. 176, §A9 (NEW). 1985, c. 295, §39 (AMD). 1985, c. 785, §B116 (AMD). 1997, c. 410, §8 (RP).

## §803. AUTHORIZATION

***(REPEALED)***

SECTION HISTORY
1993, c. 600, §A23 (NEW). 1997, c. 683, §D2 (RP).

# Subchapter 4-B: SEXUAL HARASSMENT POLICIES

## §806. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 474, §2 (NEW).]

**1**. **Commission.** "Commission" means the Maine Human Rights Commission described in Title 5, chapter 337, subchapter II.

[ 1991, c. 474, §2 (NEW) .]

**2**. **Employee.** "Employee" means any person engaged to work on a steady or regular basis, whether full-time or part-time, by an employer located or doing business in the State.

[ 1991, c. 474, §2 (NEW) .]

**3**. **Employer.** "Employer" means any person, partnership, firm, association, corporation, employment agency, labor organization, joint apprenticeship committee or other legal entity, public or private, that is located or doing business in the State. The term "employer" includes, but is not limited to:

A. Any person, partnership, firm, association or corporation acting in the interest of any employer, directly or indirectly; and [1991, c. 474, §2 (NEW).]

B. The State in its capacity as an employer. [1991, c. 474, §2 (NEW).]

[ 1991, c. 474, §2 (NEW) .]

**4**. **Sexual harassment.** "Sexual harassment" has the same meaning as found in rules adopted by the Maine Human Rights Commission under the Maine Human Rights Act, Title 5, section 4572.

[ 1991, c. 474, §2 (NEW) .]

SECTION HISTORY
1991, c. 474, §2 (NEW).

## §807. REQUIREMENTS

In addition to employer responsibilities set forth in rules adopted under Title 5, section 4572, all employers shall act to ensure a workplace free of sexual harassment by implementing the following minimum requirements. [1991, c. 474, §2 (NEW).]

**1**. **Workplace posting.** An employer shall post in a prominent and accessible location in the workplace a poster providing, at a minimum, the following information: the illegality of sexual harassment; a description of sexual harassment, utilizing examples; the complaint process available through the commission; and directions on how to contact the commission. The text of this poster may meet but may not exceed 6th-grade literacy standards. Upon request, the commission shall provide this poster to employers at a price that reflects the cost as determined by the commission. This poster may be reproduced.

[ 1991, c. 474, §2 (NEW) .]

**2**. **Employee notification.** Employers shall provide annually all employees with individual written notice that includes at a minimum the following information: the illegality of sexual harassment; the definition of sexual harassment under state law; a description of sexual harassment, utilizing examples; the internal complaint process available to the employee; the legal recourse and complaint process available through the commission; directions on how to contact the commission; and the protection against retaliation as provided pursuant to Title 5, section 4553, subsection 10, paragraph D. This notice must be initially provided within 90 days after the effective date of this subchapter. The notice must be delivered in a manner to ensure notice to all employees without exception, such as including the notice with an employee's pay.

[ 1991, c. 474, §2 (NEW) .]

**3**. **Education and training.** In workplaces with 15 or more employees, employers shall conduct an education and training program for all new employees within one year of commencement of employment that includes, at a minimum, the following information: the illegality of sexual harassment; the definition of sexual harassment under state and federal laws and federal regulations, including the Maine Human Rights Act and the Civil Rights Act of 1964, 42 United States Code, Title VII, Sections 2000e to 2000e-17; a description of sexual harassment, utilizing examples; the internal complaint process available to the employee; the legal recourse and complaint process available through the commission; directions on how to contact the commission; and the protection against retaliation as provided under Title 5, section 4553, subsection 10, paragraph D. Employers shall conduct additional training for supervisory and managerial employees within one year of commencement of employment that includes, at a minimum, the specific responsibilities of supervisory and managerial employees and methods that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

Education and training programs conducted under this subsection by the State, a county or a municipality for its public safety personnel, including, but not limited to, law enforcement personnel, corrections personnel and firefighters, may be used to meet training and education requirements mandated by any other law, rule or other official requirement.

[ 1991, c. 474, §2 (NEW) .]

SECTION HISTORY

1991, c. 474, §2 (NEW).

## Subchapter 4-C: FIREFIGHTER; ABSENCE FROM WORK

# §809. ABSENCE FOR EMERGENCY RESPONSE

**1**. **Definitions.** As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Employer" means any private or public employer, including the State and political subdivisions of the State. [2005, c. 296, §1 (NEW).]

A-1. "Firefighter" has the same meaning as "municipal firefighter" and "volunteer firefighter" in Title 30-A, section 3151, subsections 2 and 4. [2013, c. 477, §1 (NEW).]

B. "Responding to an emergency" means responding to, working at the scene of or returning from a fire call, a hazardous or toxic materials spill and cleanup or any other situation to which the fire department has been dispatched. [2005, c. 296, §1 (NEW).]

C. [2013, c. 477, §2 (RP).]

[ 2013, c. 477, §§1, 2 (AMD) .]

**2**. **Prohibition against discharge or disciplinary action.** An employer may not discharge or take any other disciplinary action against an employee because of the employee's failure to report for work at the beginning of the employee's regular working hours if the employee failed to do so because the employee was responding to an emergency in the employee's capacity as a firefighter and the employee reported for work as soon as reasonably possible after being released from the emergency. An employer may charge the lost time against the employee's regular pay or against the employee's available leave time. This subsection does not apply to the absence of a firefighter from the firefighter's regular employment as a law enforcement officer, a utility worker or medical personnel when the services of that person are essential to protect public health or safety or if the employee has been designated as essential by the employer pursuant to subsection 6.

[ 2013, c. 477, §3 (AMD) .]

**3**. **Notification; verification.** If time permits, when an employee is responding as a firefighter to an emergency, the employee, the employee's designee or the fire department supervisor shall notify the employer that the employee will not report to work at the appointed time. At the request of an employer, an employee losing work time as provided in subsection 2 shall provide the employer with a statement from the chief of the fire department or the chief's designee stating that the employee was responding to an emergency call and the time of release from the call.

[ 2013, c. 477, §4 (AMD) .]

**4**. **Enforcement; penalty for violation.** If an employer has violated subsection 2, the employee may bring an action in Superior Court in the county in which the employee resides or in the county in which the employer's place of business is located. The action must be brought within one year of the date of the alleged violation. If the court finds that the employer violated subsection 2, and if the employee so requests, the court shall order the employer to reinstate the employee in the employee's former position without reduction of pay, seniority or other benefits. The court also shall order any other appropriate remedy necessary to return the employee to the position the employee would have been in had the employer not violated subsection 2, including payment of back pay and reinstatement of any other benefits lost during the period in which the discharge or disciplinary action was in effect.

[ 2005, c. 296, §1 (NEW) .]

**5**. **Impact on individual agreements.** This section does not apply if the employer and the employee have entered into a written agreement, signed by the employer and the employee, that governs procedures to be followed when the employee is called to respond to an emergency as a firefighter. This subsection applies only if:

A. The local official in charge of calling out firefighters has a written policy that:

(1) Specifies the circumstances under which firefighters will be ordered to remain at an emergency; and

(2) Affirms that firefighters will be released as soon as practicable; and [2005, c. 296, §1 (NEW).]

B. The employee presents a copy of the policy to the employer upon notifying the employer of the employee's status as a firefighter. [2013, c. 477, §5 (AMD).]

[ 2013, c. 477, §5 (AMD) .]

**6**. **Designation as essential.** Upon receiving notice of an employee's firefighter status, an employer may designate the employee essential to the employer's operations when the absence of the employee would cause disruption of the employer's business.

[ 2013, c. 477, §6 (AMD) .]

SECTION HISTORY
2005, c. 296, §1 (NEW). 2013, c. 477, §§1-6 (AMD).

## Subchapter 5: LEAVE RELATING TO RESERVE TRAINING OR MILITARY SERVICE

## §811. PRESERVATION OF STATUS

**1**. **Intent.** The intent of this subchapter is to minimize the disruption to the lives of persons performing service in the National Guard or the Reserves of the United States Armed Forces as well as to their employers, their fellow employees and their communities by providing for the prompt reemployment of these persons upon their satisfactory completion of military service and to prohibit discrimination against these persons because of their military service.

[ 2001, c. 662, §11 (AMD) .]

**2**. **Military leave of absence.** Any member of the National Guard or the Reserves of the United States Armed Forces is entitled to a military leave of absence from a position with any public or private employer, in response to state or federal military orders. The military member shall:

A. Give prior reasonable notice, if reasonable under the military circumstances, to the member's employer of the anticipated absence for military duty; and [2001, c. 662, §11 (AMD).]

B. If the employer so requests, obtain a confirmation from the Adjutant General or applicable reserve component headquarters of the anticipated military duty and satisfactory completion of the member's military duties. [2001, c. 662, §11 (AMD).]

[ 2001, c. 662, §11 (AMD) .]

**3**. **Reinstatement.** Any person who is in compliance with subsection 2 and is still qualified to perform the duties of such position must be reinstated at the same pay, seniority, benefits and status and receive any other incidences of advantages of employment as if the person had remained continuously employed. The

period of absence must be construed as an absence with leave and, within the discretion of the employer, the leave may be with pay. The employer may not require any person returning from a period of military service to report back to work:

A. For periods of military service of 3 days or less, until the completion of the period of service and the expiration of 24 hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence; [2005, c. 524, §1 (NEW).]

B. For periods of military service of more than 3 days but not more than 15 days, until the completion of the period of service and the expiration of 48 hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence; [2005, c. 524, §1 (NEW).]

C. For periods of military service of more than 15 days but not more than 30 days, until the completion of the period of service and the expiration of 72 hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence; [2005, c. 524, §1 (NEW).]

D. For periods of military service of more than 30 days but not more than 180 days, until the completion of the period of service and the expiration of 14 days after a period allowing for the safe transportation of the person from the place of that service to the person's residence; or [2005, c. 524, §1 (NEW).]

E. For periods of military service of more than 180 days, until the completion of the period of service and the expiration of 90 days after a period allowing for the safe transportation of the person from the place of that service to the person's residence. [2005, c. 524, §1 (NEW).]

[ 2005, c. 524, §1 (AMD) .]

**4**. **Disability.** A person who is in compliance with subsection 2 but who has a disability incurred in or aggravated during the military service for which that person was absent and who, after reasonable efforts by the employer to accommodate the disability, is not qualified due to that disability to be employed in the position of employment in which the member would have been employed if the member had remained continuously employed must be reinstated without loss of seniority, benefits, status and any other incidences of advantages of employment:

A. To any other position that is equivalent in pay, seniority, benefits, status and any other incidences of advantages of employment, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer; or [2001, c. 662, §11 (NEW).]

B. To a position that is the nearest approximation to a position referred to in paragraph A in terms of pay, seniority, benefits, status and any other incidences or advantages of employment consistent with circumstances of the person's case. [2001, c. 662, §11 (NEW).]

[ 2001, c. 662, §11 (NEW) .]

**5**. **Employer defined.** As used in this section, "employer" means any person, institution, organization or other entity that pays salary or wages for work performed or that has control over employment opportunities, including a person, institution, organization or other entity to whom the employer has delegated the performance of employment-related responsibilities; the Federal Government; the State and any subdivision or agency of the State; and any successor in interest to a person, institution, organization, or other entity referred to in this subsection.

[ 2001, c. 662, §11 (NEW) .]

SECTION HISTORY
1987, c. 285, §1 (RPR). 1987, c. 769, §A105 (AMD). 2001, c. 662, §11 (AMD). 2005, c. 524, §1 (AMD).

## §812. RIGHT TO BENEFITS RETAINED

**1**. **Benefits accrual.** Absence for military training as described in section 811 does not affect the employee's right to receive normal vacation, sick leave, bonus, advancement and other advantages of employment normally to be anticipated in the employee's particular position.

[ 2001, c. 662, §12 (NEW) .]

**2**. **Extension of insurance benefits.** Insurance benefits must be extended according to this subsection.

A. A public or private employer shall continue, at no additional cost to the member, the existing health, dental and life insurance benefits for at least the first 30 days of the military duty for any member of the National Guard or the Reserves of the United States Armed Forces if the member takes a military leave of absence from a position with that employer, other than a temporary position, in response to state or federal military orders. [2001, c. 662, §12 (NEW).]

B. After the expiration of the first 30 days of military leave, the member of the National Guard or the Reserves of the United States Armed Forces has the option of continuing the health, dental and life insurance benefits in effect at the member's own expense by paying the insurance premium at the same rates as paid by the employer. [2001, c. 662, §12 (NEW).]

[ 2001, c. 662, §12 (NEW) .]

SECTION HISTORY
2001, c. 662, §12 (RPR).

## §813. REMEDIES

**1**. **Action authorized.** If any employer fails to comply with any of the provisions of sections 811 and 812, the Attorney General, Judge Advocates of the Maine National Guard or employee may bring a civil action for damages for such noncompliance or apply to the courts for such equitable relief as may be just and proper under the circumstances.

[ 2001, c. 662, §12 (NEW) .]

**2**. **Award of fees; costs.** In any civil action under section 811 or 812, the court in its discretion may award reasonable attorney's fees and costs.

[ 2001, c. 662, §12 (NEW) .]

SECTION HISTORY
2001, c. 662, §12 (RPR).

## §814. FAMILY MILITARY LEAVE

**1**. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Deployed for military service" or "deployment" means active military duty with the state military forces, as defined in Title 37-B, section 102, or the United States Armed Forces, including the National Guard and Reserves, whether pursuant to orders of the Governor or the President of the United States, when the duty assignment is in a combat theater or in an area where armed conflict is taking place. [2005, c. 523, §2 (NEW).]

B. "Employee" means any person who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment and who has been employed by the same employer for at least 12 months and has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the employee's family military leave. [2007, c. 388, §1 (AMD).]

C. "Employee benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance and pensions, regardless of whether benefits are provided by a policy or practice of an employer. [2005, c. 523, §2 (NEW).]

D. "Employer" means:

(1) Any person, partnership, corporation, association or other business entity; and

(2) The State, a county, a municipality or any political subdivision. [2005, c. 523, §2 (NEW).]

E. "Family military leave" means leave requested by an employee who is the spouse, domestic partner or parent of a person who is a resident of the State and is deployed for military service for a period lasting longer than 180 days with the State or United States pursuant to the orders of the Governor or the President of the United States. [2005, c. 523, §2 (NEW).]

[ 2007, c. 388, §1 (AMD) .]

**2**. **Family military leave requirement.** Subject to the requirements of subsection 3, an employer that employs 15 or more employees shall provide each eligible employee up to 15 days of family military leave per deployment, if requested by the employee. Family military leave under this subsection may be taken only during one or more of the following time frames:

A. The 15 days immediately prior to deployment; [2007, c. 388, §2 (NEW).]

B. Deployment, if the military member is granted leave; or [2007, c. 388, §2 (NEW).]

C. The 15 days immediately following the period of deployment. [2007, c. 388, §2 (NEW).]

Family military leave granted under this section may consist of unpaid leave.

[ 2007, c. 388, §2 (RPR) .]

**3**. **Notice requirements.** An employee taking family military leave under this section is subject to the following.

A. The employee must give at least 14 days' notice of the intended date upon which the family military leave will commence if leave will consist of 5 or more consecutive work days. [2005, c. 523, §2 (NEW).]

B. An employee taking family military leave for fewer than 5 consecutive work days must give the employer advance notice as is practicable. [2005, c. 523, §2 (NEW).]

C. The employee shall consult with the employer to attempt to schedule the leave so as to not unduly disrupt the operations of the employer. [2005, c. 523, §2 (NEW).]

[ 2005, c. 523, §2 (NEW) .]

**4**. **Certification.** An employer may require certification from the proper military authority to verify an employee's eligibility for the family military leave requested pursuant to this section.

[ 2005, c. 523, §2 (NEW) .]

**5**. **Restoration to position.** An employee who exercises the right to family military leave under this section is entitled, upon expiration of the leave, to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay and other terms and conditions of employment. This subsection does not apply if the employer proves that the employee was not restored as provided in this subsection because of conditions unrelated to the employee's exercise of rights under this section.

[ 2005, c. 523, §2 (NEW) .]

**6**. **Employee benefits protection.** An employer shall make it possible for an employee to continue employee benefits at the employee's expense during any family military leave taken under this section. The employer and employee may negotiate for the employer to maintain employee benefits at the employer's expense for the duration of the leave.

A. Taking family military leave under this section does not result in the loss of any employee benefit accrued before the date on which the leave commenced. [2005, c. 523, §2 (NEW).]

B. Nothing in this section may be construed to affect an employer's obligation to comply with any collective bargaining agreement or employee benefit plan that provides greater leave rights to employees than the rights provided under this section. [2005, c. 523, §2 (NEW).]

C. The family military leave rights provided under this section may not be diminished by any collective bargaining agreement or employee benefit plan. [2005, c. 523, §2 (NEW).]

D. Nothing in this section may be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered under this section. [2005, c. 523, §2 (NEW).]

[ 2005, c. 523, §2 (NEW) .]

**7**. **Prohibited acts.** An employer may not:

A. Interfere with, restrain or deny the exercise or the attempt to exercise any right provided under this section; [2005, c. 523, §2 (NEW).]

B. Discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee who exercises any right provided under this section; or [2005, c. 523, §2 (NEW).]

C. Discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for opposing any practice made unlawful by this section. [2005, c. 523, §2 (NEW).]

[ 2005, c. 523, §2 (NEW) .]

**8**. **Enforcement.** An employee may bring a civil action in Superior Court to enforce this section. The court may enjoin any act or practice that violates or may violate this section and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce this section.

[ 2005, c. 523, §2 (NEW) .]

SECTION HISTORY
2005, c. 523, §2 (NEW). 2007, c. 388, §§1, 2 (AMD).

## Subchapter 5-A: LEAVE OF ABSENCE AS LEGISLATOR

## §821. PERSON EMPLOYED IN POSITION OTHER THAN TEMPORARY

Any person, except a person covered under Title 20-A, section 13602, employed in a position other than a temporary position shall be granted a leave of absence to fulfill the duties of a Legislator, provided that the employee gives written notice to his employer of his intent to become a candidate for the Legislature within 10 days after taking action under Title 21-A to place his name on a primary or general election ballot.

Following his term of service as a Legislator, the employee, if he is still qualified to perform the duties of the position from which he was granted leave, shall be entitled to be restored to his previous, or a similar, position with the same status, pay and seniority. This leave of absence shall, within the discretion of the employer, be with or without pay and shall be limited to one legislative term of 2 years. [1987, c. 402, Pt. A, §154 (AMD).]

*§821. Short title*

*(As enacted by PL 1983, c. 452 is REALLOCATED TO TITLE 26, SECTION 831)*

SECTION HISTORY
1983, c. 128, §1 (NEW). 1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).
1985, c. 161, §7 (AMD). 1987, c. 402, §A154 (AMD).

## §822. EXCEPTION FOR EMPLOYER WITH 5 OR FEWER EMPLOYEES

This subchapter is not applicable if the employer employs 5 or fewer persons immediately prior to the first day of the leave of absence. [1983, c. 128, §1 (NEW).]

*§822. Definitions*

*(As enacted by PL 1983, c. 452 is REALLOCATED TO TITLE 26, SECTION 832)*

SECTION HISTORY
1983, c. 128, §1 (NEW). 1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

## §823. WAIVER OF RIGHT

An employee who fails to provide the notice to his employer required by section 821 waives any rights to a leave of absence provided by this subchapter. [1983, c. 128, §1 (NEW).]

*§823. Discharge of, threats to or discrimination against employee for reporting violations of law or refusing to carry out illegal directives*

*(As enacted by PL 1983, c. 452 is REALLOCATED TO TITLE 26, SECTION 833)*

SECTION HISTORY
1983, c. 128, §1 (NEW). 1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

## §824. APPEAL BY EMPLOYER

**1**. **Request.** An employer who feels that granting the leave of absence required by this subchapter will cause unreasonable hardship for the employer's business may appeal for relief by filing a written notice of appeal with the chair of the State Board of Arbitration and Conciliation. If the notice of appeal is not filed within 14 days of receipt of the employee's notice requesting a leave of absence, the employer waives the right to appeal. The notice of appeal must state the name of the employee and the reasons for the alleged unreasonable hardship. Payment for the services of a member of the State Board of Arbitration and Conciliation must be shared by the parties in accordance with section 931. This section provides the exclusive remedy for an employer claiming unreasonable hardship as a result of a request for leave of absence.

[ 2005, c. 119, §1 (AMD) .]

**2**. **Proceedings.** The chairman of the State Board of Arbitration and Conciliation, or any member of the board designated by the chairman, shall serve as an arbitrator of any case appealed under this section. The proceeding shall provide an opportunity for the employee to respond, orally or in writing, to the allegations contained in the appeal. Within 30 days of receipt of the notice of appeal, the arbitrator shall issue an order,

binding on both parties, either affirming or denying the claim of unreasonable hardship. If the claim is affirmed, the employee is not entitled to a leave of absence under this subchapter. In reaching his decision, the arbitrator shall consider, but is not limited to, the following factors:

A. The length of time the employee has been employed by the employer; [1983, c. 128, §1 (NEW).]

B. The number of employees in the employer's business; [1983, c. 128, §1 (NEW).]

C. The nature of the employer's business; [1983, c. 128, §1 (NEW).]

D. The nature of the position held by the employee and the ease or difficulty and cost of temporarily filling the position during the leave of absence; and [1983, c. 128, §1 (NEW).]

E. Any agreement entered into between the employee and employer as a condition of employment. [1983, c. 128, §1 (NEW).]

*§824. Civil actions for injunctive relief or other remedies*

*(As enacted by PL 1983, c. 452 is REALLOCATED TO TITLE 26, SECTION 834)*

[ 1983, c. 128, §1 (NEW) .]

SECTION HISTORY
1983, c. 128, §1 (NEW). 1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 2005, c. 119, §1 (AMD).

## §825. REMEDIES ORDERED BY COURT

***(REALLOCATED TO TITLE 26, SECTION 835)***

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

## §826. PENALTIES FOR VIOLATIONS

***(REALLOCATED TO TITLE 26, SECTION 836)***

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

## §827. COLLECTIVE BARGAINING RIGHTS

***(REALLOCATED TO TITLE 26, SECTION 837)***

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

## §828. COMPENSATION FOR EMPLOYEE PARTICIPATION IN INVESTIGATION, HEARING OR INQUIRY

***(REALLOCATED TO TITLE 26, SECTION 838)***

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

## §829. NOTICES OF EMPLOYEE PROTECTIONS AND OBLIGATIONS

***(REALLOCATED TO TITLE 26, SECTION 839)***

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

## §830. JURY TRIAL; COMMON-LAW RIGHTS

***(REALLOCATED TO TITLE 26, SECTION 840)***

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

# Subchapter 5-B: PROTECTION OF EMPLOYEES WHO REPORT OR REFUSE TO COMMIT ILLEGAL ACTS

## §831. SHORT TITLE

***(REALLOCATED FROM TITLE 26, SECTION 821)***

This subchapter may be cited as the "Whistleblowers' Protection Act." [1983, c. 583, §15 (RAL).]

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

## §832. DEFINITIONS

***(REALLOCATED FROM TITLE 26, SECTION 822)***

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 583, §15 (RAL).]

**1**. **Employee.** "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, expressed or implied, but does not include an independent contractor engaged in lobster fishing. "Employee" includes school personnel and a person employed by the State or a political subdivision of the State.

[ 1999, c. 351, §5 (AMD) .]

**2**. **Employer.** "Employer" means a person who has one or more employees. "Employer" includes an agent of an employer and the State, or a political subdivision of the State. "Employer" also means all schools and local education agencies.

[ 1999, c. 351, §6 (AMD) .]

**3**. **Person.** "Person" means an individual, sole proprietorship, partnership, corporation, association or any other legal entity.

[ 1983, c. 583, §15 (RAL) .]

**4**. **Public body.** "Public body" means all of the following:

A. A state officer, employee, agency, department, division, bureau, board, commission, council, authority or other body in the executive branch of State Government; [1983, c. 583, §15 (RAL).]

B. An agency, board, commission, council, member or employee of the legislative branch of State Government; [1983, c. 583, §15 (RAL).]

C. A county, municipal, village, intercounty, intercity or regional governing body, a council, school district or municipal corporation, or a board, department, commission, council, agency or any member or employee thereof; [1983, c. 583, §15 (RAL).]

D. Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body; [1983, c. 583, §15 (RAL).]

E. A law enforcement agency or any member or employee of a law enforcement agency; and [1983, c. 583, §15 (RAL).]

F. The judiciary and any member or employee of the judiciary. [1983, c. 583, §15 (RAL).]

[ 1983, c. 583, §15 (RAL) .]

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1987, c. 402, §B21 (AMD). 1999, c. 351, §§5,6 (AMD).

## §833. DISCRIMINATION AGAINST CERTAIN EMPLOYEES PROHIBITED

***(REALLOCATED FROM TITLE 26, SECTION 823)***

**1**. **Discrimination prohibited.** No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because:

A. The employee, acting in good faith, or a person acting on behalf of the employee, reports orally or in writing to the employer or a public body what the employee has reasonable cause to believe is a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States; [1987, c. 782, §4 (NEW).]

B. The employee, acting in good faith, or a person acting on behalf of the employee, reports to the employer or a public body, orally or in writing, what the employee has reasonable cause to believe is a condition or practice that would put at risk the health or safety of that employee or any other individual. The protection from discrimination provided in this section specifically includes school personnel who report safety concerns to school officials with regard to a violent or disruptive student; [1999, c. 351, §7 (AMD).]

C. The employee is requested to participate in an investigation, hearing or inquiry held by that public body, or in a court action; [2003, c. 306, §1 (AMD).]

D. The employee acting in good faith has refused to carry out a directive to engage in activity that would be a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States or that would expose the employee or any individual to a condition that would result in serious injury or death, after having sought and been unable to obtain a correction of the illegal activity or dangerous condition from the employer; or [2003, c. 688, Pt. A, §27 (RPR).]

E. The employee, acting in good faith and consistent with state and federal privacy laws, reports to the employer, to the patient involved or to the appropriate licensing, regulating or credentialing authority, orally or in writing, what the employee has reasonable cause to believe is an act or omission that constitutes a deviation from the applicable standard of care for a patient by an employer charged with the care of that patient. For purposes of this paragraph, "employer" means a health care provider, health care practitioner or health care entity as defined in Title 24, section 2502. [2003, c. 306, §2 (NEW).]

[ 2003, c. 688, Pt. A, §27 (AMD) .]

**2**. **Initial report to employer required; exception.** Subsection 1 does not apply to an employee who has reported or caused to be reported a violation, or unsafe condition or practice to a public body, unless the employee has first brought the alleged violation, condition or practice to the attention of a person having supervisory authority with the employer and has allowed the employer a reasonable opportunity to correct that violation, condition or practice.

Prior notice to an employer is not required if the employee has specific reason to believe that reports to the employer will not result in promptly correcting the violation, condition or practice.

[ 1987, c. 782, §4 (NEW) .]

**3**. **Reports of suspected abuse.** An employee required to report suspected abuse, neglect or exploitation under Title 22, section 3477 or 4011-A, shall follow the requirements of those sections under those circumstances. No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee followed the requirements of those sections.

[ 2001, c. 345, §7 (AMD) .]

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1987, c. 782, §4 (RPR). 1999, c. 351, §7 (AMD). 2001, c. 345, §7 (AMD). 2003, c. 306, §§1,2 (AMD). 2003, c. 357, §1 (AMD). 2003, c. 688, §A27 (AMD).

## §834. CIVIL ACTIONS FOR INJUNCTIVE RELIEF OR OTHER REMEDIES

***(REALLOCATED FROM TITLE 26, SECTION 824)***
***(REPEALED)***

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1983, c. 816, §A18 (AMD). 1987, c. 782, §5 (RP).

## §834-A. ARBITRATION BEFORE THE MAINE HUMAN RIGHTS COMMISSION

An employee who alleges a violation of that employee's rights under section 833, and who has complied with the requirements of section 833, subsection 2, may bring a complaint before the Maine Human Rights Commission for action under Title 5, section 4612. [1987, c. 782, §6 (NEW).]

SECTION HISTORY
1987, c. 782, §6 (NEW).

## §835. REMEDIES ORDERED BY COURT

***(REALLOCATED FROM TITLE 26, SECTION 825)***
***(REPEALED)***

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1987, c. 782, §7 (RP).

## §836. PENALTIES FOR VIOLATIONS

***(REALLOCATED FROM TITLE 26, SECTION 826)***

A person who violates section 839 is liable for a civil fine of $10 for each day of willful violation which shall not be suspended. Any civil fine imposed under this section shall be submitted to the Treasurer of State for deposit to the General Fund. [1983, c. 816, Pt. A, §19 (AMD).]

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1983, c. 816, §A19 (AMD).

## §837. COLLECTIVE BARGAINING RIGHTS

***(REALLOCATED FROM TITLE 26, SECTION 827)***

This subchapter shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement. [1983, c. 583, §15 (RAL).]

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

## §838. COMPENSATION FOR EMPLOYEE PARTICIPATION IN INVESTIGATION, HEARING OR INQUIRY

***(REALLOCATED FROM TITLE 26, SECTION 828)***

This subchapter shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a public body in accordance with section 833. [1983, c. 816, Pt. A, §20 (AMD).]

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1983, c. 816, §A20 (AMD).

## §839. NOTICES OF EMPLOYEE PROTECTIONS AND OBLIGATIONS

***(REALLOCATED FROM TITLE 26, SECTION 829)***

**1**. **Notice provided; posting.** The Department of Labor shall provide each employer in the State with a notice as provided in this section. Each employer shall prominently post the notice in the employer's place of business so that the employees are informed of their protections and obligations under this subchapter.

[ 1987, c. 782, §8 (NEW) .]

**2**. **Contents of notice.** The notice provided by the department shall include:

A. A summary of this subchapter written in concise and plain language; [1987, c. 782, §8 (NEW).]

B. A telephone number at the department that employees may call if they have questions or wish to report a violation, condition or practice; and [1987, c. 782, §8 (NEW).]

C. A space where the employer shall write in the name of the individual or department to which employees may report violations, unsafe conditions or practices as required by section 833. [1987, c. 782, §8 (NEW).]

[ 1987, c. 782, §8 (NEW) .]

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1987, c. 782, §8 (RPR).

## §840. COMMON-LAW RIGHTS

***(REALLOCATED FROM TITLE 26, SECTION 830)***

Nothing in this section may be construed to derogate any common-law rights of an employee. [1987, c. 782, §9 (RPR).]

SECTION HISTORY
1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1987, c. 782, §9 (RPR).

## Subchapter 6: EMPLOYEE TRUSTS

## §841. NOT SUBJECT TO RULE AGAINST PERPETUITIES

A trust of real or personal property, or real and personal property combined, created by an employer as part of a stock bonus, pension, disability, death benefit or profit sharing plan for the benefit of some or all of his employees, to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees the earnings or the principal, or both earnings and principal, of the fund held in trust, may continue in perpetuity or for such time as may be necessary to accomplish the purpose for which it is created, and shall not be invalid as violating any rule of law against perpetuities or suspension of the power of alienation of the title to property.

No rule of law against perpetuities or suspension of the power of alienation of the title to property shall operate to invalidate any trust created or attempted to be created, prior to August 20, 1951, by an employer as a part of a stock bonus, pension, disability, death benefit or profit sharing plan for the benefit of some or all of his employees to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees earnings or principal, or both earnings and principal, of the fund held in trust, unless the trust is terminated by a court of competent jurisdiction in a civil action instituted within 3 years after August 20, 1951.

## Subchapter 6-A: FAMILY MEDICAL LEAVE REQUIREMENTS

## §843. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 661, (NEW).]

**1**. **Employee.** "Employee" means any person who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment but does not include an independent contractor.

[ 1987, c. 661, (NEW) .]

**2**. **Employee benefits.** "Employee benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

[ 1987, c. 661, (NEW) .]

**3**. **Employer.** "Employer" means:

A. Any person, sole proprietorship, partnership, corporation, association or other business entity that employs 15 or more employees at one location in this State; [1999, c. 127, Pt. D, §2 (AMD).]

B. The State, including the executive, legislative and judicial branches, and any state department or agency that employs any employees; [1987, c. 661, (NEW).]

C. Any city, town or municipal agency that employs 25 or more employees; and [1987, c. 661, (NEW).]

D. Any agent of an employer, the State or a political subdivision of the State. [1987, c. 661, (NEW).]

[ 1999, c. 127, Pt. D, §2 (AMD) .]

**4**. **Family medical leave.** "Family medical leave" means leave requested by an employee for:

A. Serious health condition of the employee; [1997, c. 546, §1 (AMD).]

B. The birth of the employee's child or the employee's domestic partner's child; [2007, c. 261, §1 (AMD).]

C. The placement of a child 16 years of age or less with the employee or with the employee's domestic partner in connection with the adoption of the child by the employee or the employee's domestic partner; [2007, c. 261, §1 (AMD).]

D. A child, domestic partner's child, parent, domestic partner, sibling or spouse with a serious health condition; [2007, c. 519, §1 (RPR).]

E. The donation of an organ of that employee for a human organ transplant; or [2007, c. 388, §4 (AMD).]

F. The death or serious health condition of the employee's spouse, domestic partner, parent, sibling or child if the spouse, domestic partner, parent, sibling or child as a member of the state military forces, as defined in Title 37-B, section 102, or the United States Armed Forces, including the National Guard and Reserves, dies or incurs a serious health condition while on active duty. [2007, c. 519, §2 (AMD).]

[ 2007, c. 519, §§1, 2 (AMD) .]

**4-A**. **Health care provider.** "Health care provider" means:

A. A doctor of medicine or osteopathy who is licensed to practice medicine or surgery in this State; or [1997, c. 546, §2 (NEW).]

B. Any other person determined by the Secretary of Labor to be capable of providing health care services. [1997, c. 546, §2 (NEW).]

[ 1997, c. 546, §2 (NEW) .]

**4-B**. **Reduced leave schedule.** "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

[ 2007, c. 233, §1 (NEW) .]

**5**. **Serious illness.**

[ 1997, c. 546, §3 (RP) .]

**6**. **Serious health condition.** "Serious health condition" means an illness, injury, impairment or physical or mental condition that involves:

A. Inpatient care in a hospital, hospice or residential medical care facility; or [1997, c. 546, §2 (NEW).]

B. Continuing treatment by a health care provider. [1997, c. 546, §2 (NEW).]

[ 1997, c. 546, §2 (NEW) .]

**7**. **Domestic partner.** "Domestic partner" means the partner of an employee who:

A. Is a mentally competent adult as is the employee; [2007, c. 261, §2 (NEW).]

B. Has been legally domiciled with the employee for at least 12 months; [2007, c. 261, §2 (NEW).]

C. Is not legally married to or legally separated from another individual; [2007, c. 261, §2 (NEW).]

D. Is the sole partner of the employee and expects to remain so; [2007, c. 261, §2 (NEW).]

E. Is not a sibling of the employee; and [2007, c. 261, §2 (NEW).]

F. Is jointly responsible with the employee for each other's common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property. [2007, c. 261, §2 (NEW).]

[ 2007, c. 261, §2 (NEW) .]

**8**. **Sibling.** "Sibling" means a sibling of an employee who is jointly responsible with the employee for each other's common welfare as evidenced by joint living arrangements and joint financial arrangements.

[ 2007, c. 519, §3 (NEW) .]

SECTION HISTORY
1987, c. 661, (NEW). 1997, c. 546, §§1-3 (AMD). 1999, c. 127, §D2 (AMD). 2001, c. 684, §§1-3 (AMD). 2007, c. 233, §1 (AMD). 2007, c. 261, §§1, 2 (AMD). 2007, c. 388, §§3-5 (AMD). 2007, c. 519, §§1-3 (AMD).

## §844. FAMILY MEDICAL LEAVE REQUIREMENT

**1**. **Family medical leave entitlement.** Every employee who has been employed by the same employer for 12 consecutive months is entitled to up to 10 work weeks of family medical leave in any 2 years unless employed at a permanent work site with fewer than 15 employees. The following conditions apply to family medical leave granted under this subchapter:

A. The employee must give at least 30 days' notice of the intended date upon which family medical leave will commence and terminate, unless prevented by medical emergency from giving that notice; [1987, c. 861, §§19, 20 (AMD).]

B. The employer may require certification from a physician to verify the amount of leave requested by the employee, except that an employee who in good faith relies on treatment by prayer or spiritual means, in accordance with the tenets and practice of a recognized church or religious denomination, may submit certification from an accredited practitioner of those healing methods; and [1991, c. 277, §1 (AMD).]

C. The employer and employee may negotiate for more or less leave, but both parties must agree. [1987, c. 661, (NEW).]

[ 2007, c. 233, §2 (AMD) .]

**2**. **Unpaid leave.** Family medical leave granted under this subchapter may consist of unpaid leave. If an employer provides paid family medical leave for fewer than 10 weeks, the additional weeks of leave added to attain the total of 10 weeks required may be unpaid.

[ 1991, c. 277, §1 (AMD) .]

**3**. **Leave taken intermittently or on reduced leave schedule.** Intermittent or reduced leave schedule family medical leave may be taken subject to the following limitations:

A. Leave for a reason described in section 843, subsection 4, paragraph B or C may not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer agree otherwise. Subject to subsection 1, paragraphs A and B, leave for a reason described in section 843, subsection 4, paragraph A, D or E may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph may not result in a reduction in the total amount of leave to which the employee is entitled under subsection 1 beyond the amount of leave actually taken. [2007, c. 233, §3 (NEW).]

B. If an employee requests intermittent leave, or leave on a reduced leave schedule, for a reason described in section 843, subsection 4, paragraph A, D or E that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that:

(1) Has equivalent pay and benefits; and

(2) Better accommodates recurring periods of leave than the regular employment position of the employee. [2007, c. 233, §3 (NEW).]

[ 2007, c. 233, §3 (NEW) .]

SECTION HISTORY
1987, c. 661, (NEW). 1987, c. 861, §§19,20 (AMD). 1991, c. 277, §1 (AMD). 1997, c. 515, §1 (AMD). 2007, c. 233, §§2, 3 (AMD).

## §845. EMPLOYEE BENEFITS PROTECTION

**1**. **Restoration.** Any employee who exercises the right to family medical leave under this subchapter, upon expiration of the leave, is entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay and other terms and conditions of employment. This subsection does not apply if the employer proves that the employee was not restored as provided in this subsection because of conditions unrelated to the employee's exercise of rights under this subchapter.

[ 1987, c. 661, (NEW) .]

**2**. **Maintenance of employee benefits.** During any family medical leave taken under this subchapter, the employer shall make it possible for employees to continue their employee benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

[ 1991, c. 277, §2 (AMD) .]

SECTION HISTORY
1987, c. 661, (NEW). 1991, c. 277, §2 (AMD).

## §846. EFFECT ON EXISTING EMPLOYEE BENEFITS

**1**. **Benefit accrual.** The taking of family medical leave under this subchapter shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

[ 1987, c. 661, (NEW) .]

**2**. **Effect on collective bargaining.** Nothing in this subchapter may be construed to affect an employer's obligation to comply with any collective bargaining agreement or employee benefit plan that provides greater family medical leave rights to employees than the rights provided under this subchapter.

[ 1987, c. 661, (NEW) .]

**3**. **Rights not diminished.** The family medical leave rights mandated by this subchapter may not be diminished by any collective bargaining agreement or by any employee benefit plan.

[ 1987, c. 661, (NEW) .]

**4**. **Contract rights.** Nothing in this subchapter may be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered by this subchapter.

[ 1987, c. 661, (NEW) .]

SECTION HISTORY
1987, c. 661, (NEW).

## §847. PROHIBITED ACTS

**1**. **Unlawful interference or denial of rights.** The employer may not interfere with, restrain or deny the exercise of or the attempt to exercise any right provided by this subchapter.

[ 1987, c. 661, (NEW) .]

**2**. **Unlawful discrimination against exercise of rights.** The employer may not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for exercising any right provided by this subchapter.

[ 1987, c. 661, (NEW) .]

**3**. **Unlawful discrimination against opposition.** The employer may not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for opposing any practice made unlawful by this subchapter.

[ 1987, c. 661, (NEW) .]

SECTION HISTORY
1987, c. 661, (NEW).

## §848. JUDICIAL ENFORCEMENT

**1**. **Injunction and damages.** A civil action may be brought in the appropriate court by an employee against any employer to enforce this subchapter. The court may enjoin any act or practice that violates or may violate this subchapter and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce this subchapter. The court also may:

A. Award damages equal to the wages, salary, employment benefits or other compensation denied or lost to the employee by reason of the violation; or [2005, c. 228, §1 (NEW).]

B. Order the employer to pay liquidated damages of $100 to the employee for each day that the violation continued. [2005, c. 228, §1 (NEW).]

[ 2005, c. 228, §1 (NEW) .]

**2**. **Additional damages.** The court also may order the employer to pay an additional amount as liquidated damages equal to the amount awarded under subsection 1 if the employee proves to the satisfaction of the court that the employer's violation was willful.

[ 2005, c. 228, §1 (NEW) .]

**3**. **Attorney's fees.** In any action brought pursuant to this section, in addition to any judgment awarded to the employee, the court shall award reasonable attorney's fees and other costs of the action to be paid by the employer.

[ 2005, c. 228, §1 (NEW) .]

SECTION HISTORY
1987, c. 661, (NEW). 2005, c. 228, §1 (RPR).

## §849. REVIEW; SUNSET

***(REPEALED)***

SECTION HISTORY
1987, c. 661, (NEW). 1989, c. 738, §2 (RP).

# Subchapter 6-B: EMPLOYMENT LEAVE FOR VICTIMS OF VIOLENCE

## §850. EMPLOYMENT LEAVE FOR VICTIMS OF VIOLENCE

**1**. **Required leave.** An employer must grant reasonable and necessary leave from work, with or without pay, for an employee to:

A. Prepare for and attend court proceedings; [1999, c. 435, §1 (NEW).]

B. Receive medical treatment or attend to medical treatment for a victim who is the employee's daughter, son, parent or spouse; or [2001, c. 685, §1 (AMD).]

C. Obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking. [1999, c. 435, §1 (NEW).]

The leave must be needed because the employee or the employee's daughter, son, parent or spouse is a victim of violence, assault, sexual assaults under Title 17-A, chapter 11, stalking or any act that would support an order for protection under Title 19-A, chapter 101. An employer may not sanction an employee or deprive an employee of pay or benefits for exercising a right granted by this section.

[ 2001, c. 685, §1 (AMD) .]

**1-A**. **Definitions.** For purposes of this subchapter, the terms "daughter," "son," "parent" and "spouse" have the same meanings as those terms have under federal regulations adopted pursuant to 29 United States Code, Section 2654, as in effect on January 1, 2002. An employer may require an employee to provide reasonable documentation of the family relationship, which may include a statement from the employee, a birth certificate, a court document or similar documents.

[ 2001, c. 685, §2 (NEW) .]

**2**. **Exceptions.** Subsection 1 is not violated if:

A. The employer would sustain undue hardship from the employee's absence; [2001, c. 685, §3 (AMD).]

B. The request for leave is not communicated to the employer within a reasonable time under the circumstances; or [1999, c. 435, §1 (NEW).]

C. The requested leave is impractical, unreasonable or unnecessary based on the facts then made known to the employer. [1999, c. 435, §1 (NEW).]

[ 2001, c. 685, §3 (AMD) .]

**3**. **Penalties.** If notice of a violation of this section is given to the employer and the Department of Labor within 6 months of the occurrence, the Department of Labor may assess penalties as follows:

A. For denial of leave in violation of this section, a fine of up to $1,000 for each violation of this section may be assessed. A fine assessed under this paragraph must be paid to the Treasurer of State. Additionally, the employer shall pay liquidated damages to the affected individual in an amount equal to 3 times the amount of total assessed fines; and [2015, c. 343, Pt. A, §1 (NEW).]

B. For termination in connection with an individual exercising a right granted by this section, the affected individual may elect to receive:

(1) Liquidated damages pursuant to paragraph A; or

(2) Reemployment with the employer with back wages. [2015, c. 343, Pt. A, §1 (NEW).]

[ 2015, c. 343, Pt. A, §1 (AMD) .]

**4**. **Application.** This subchapter applies to all public and private employers, including the State and its political subdivisions.

[ 1999, c. 659, §2 (NEW) .]

SECTION HISTORY
1999, c. 435, §1 (NEW). 1999, c. 659, §2 (AMD). 2001, c. 685, §§1-3 (AMD). 2015, c. 343, Pt. A, §1 (AMD).

## Subchapter 7: STRIKEBREAKERS

## §851. POLICY

It is declared to be the policy of the State, in the exercise of its police power for the protection of the public safety and for the maintenance of peace and good order and for the promotion of the state's trade, commerce and manufacturing, to assure all persons involved in labor strikes or lockouts, freedom of speech and freedom from bodily harm and to prohibit the occasion of violence and disorder and in furtherance of these policies, to prohibit the recruitment and furnishing of professional strikebreakers to replace the employees involved in labor strikes or lockouts. [1965, c. 189, (NEW).]

SECTION HISTORY
1965, c. 189, (NEW). 1965, c. 394, (NEW). 1965, c. 513, §46 (RP).

## §852. EMPLOYMENT OF REPLACEMENTS PROHIBITED

No person, partnership, union, agency, firm or corporation or officer, employee or agent thereof shall recruit, procure, supply or refer any person for employment who customarily and repeatedly offers himself for employment in place of any employee involved in a labor, strike or lockout in which such person, partnership, union, agency, firm or corporation is not directly involved. [1965, c. 189, (NEW).]

SECTION HISTORY
1965, c. 189, (NEW). 1965, c. 394, (NEW). 1965, c. 513, §46 (RP).

## §853. ARRANGEMENTS

No person, partnership, union, firm or corporation involved in a labor, strike or lockout shall, directly or indirectly, employ in the place of an employee involved in such strike or lockout any person who customarily and repeatedly offers himself for employment in the place of employees involved in a labor strike or lockout, or contract or arrange with any other person, partnership, union, agency, firm or corporation to recruit, procure, supply or refer persons for employment who customarily and repeatedly offers themselves for employment in place of employees involved in such labor, strike or lockout. [1965, c. 189, (NEW).]

SECTION HISTORY
1965, c. 189, (NEW). 1965, c. 394, (NEW). 1965, c. 513, §46 (RP).

## §854. OFFERS

No person who customarily and repeatedly offers himself for employment in place of employees involved in a labor, strike or lockout shall take or offer to take the place of employment of any employee involved in a labor, strike or lockout. [1965, c. 189, (NEW).]

SECTION HISTORY
1965, c. 189, (NEW). 1965, c. 394, (NEW). 1965, c. 513, §46 (RP).

## §855. EVIDENCE

It shall be prima facie evidence that a person customarily and repeatedly offers himself for employment in place of employees involved in a labor, strike or lockout, if such person shall have 2 times before offered to take the place of employment of persons involved in labor, strikes or lockouts. [1965, c. 189, (NEW).]

SECTION HISTORY
1965, c. 189, (NEW).

## §856. PENALTY

Any person, partnership, union, agency, firm or corporation or any officer, employee or agent thereof, who or which shall willfully and knowingly violate any provision of this subchapter, for each violation, shall be punished by a fine of not more than $300 for any such offense, or by imprisonment for not more than 180 days, or by both. [1965, c. 189, (NEW).]

SECTION HISTORY
1965, c. 189, (NEW).

# Subchapter 8: FAIR EMPLOYMENT PRACTICE ACT

## §861. RIGHT TO FREEDOM FROM DISCRIMINATION IN EMPLOYMENT

***(REPEALED)***

SECTION HISTORY
1965, c. 513, §47 (NEW). 1971, c. 501, §3 (RP).

## §862. UNLAWFUL EMPLOYMENT PRACTICES

***(REPEALED)***

SECTION HISTORY
1965, c. 513, §47 (NEW). 1971, c. 501, §3 (RP).

## §863. PROCEDURE

***(REPEALED)***

SECTION HISTORY
1965, c. 513, §47 (NEW). 1971, c. 501, §3 (RP).

## §864. PENALTY

***(REPEALED)***

SECTION HISTORY
1965, c. 513, §47 (NEW). 1971, c. 501, §3 (RP).

# Subchapter 9: FOREIGN LABORERS; LOGGING

## §871. ILLEGAL EMPLOYMENT OF ALIENS

**1**. **Prohibition.** No employer shall knowingly employ any alien in this State who has not been lawfully admitted to the United States for permanent residence, unless the employment of the alien is authorized by the United States Immigration and Naturalization Service.

[ 1977, c. 116, (NEW) .]

**1-A**. **Violation.** Upon conviction of a violation of subsection 1, an employer may not employ aliens granted permission to work temporarily under 8 United States Code, Section 1101(a)(15)(H)(ii)(a) in this State for 2 years.

[ 2009, c. 637, §1 (NEW) .]

**2**. **Penalty.** Violation of subsection 1 or 1-A is a Class E crime. It is an affirmative defense to prosecution under subsection 1 that the employer, before employing or referring a person for employment, made a good faith inquiry as to whether that person was a United States citizen or an alien, and if the inquiry reasonably indicated that the person was an alien, the employer made a further good faith inquiry that reasonably indicated that the alien was lawfully admitted to the United States for permanent residence or that the United States Immigration and Naturalization Service had authorized the alien to accept employment in the United States.

A. A good faith inquiry under this subsection must be in writing. An employment application form that requests citizenship data, or an alien registration number if the applicant is an alien, meets the requirement of a good faith inquiry in writing. [2009, c. 637, §2 (AMD).]

B. A social security account number card is not considered evidence of the United States Immigration and Naturalization Service's authorization for an alien to accept employment in the United States. [2009, c. 637, §2 (AMD).]

[ 2009, c. 637, §2 (AMD) .]

**3**. **Regulations.** The Commissioner of Labor shall promulgate regulations specifying the procedure to be followed by each employer to ensure compliance with subsection 1. These regulations shall include provisions for reporting violations of subsection 1 to the Attorney General and the United States Immigration and Naturalization Service.

[ 1981, c. 168, §25 (AMD) .]

SECTION HISTORY

1977, c. 116, (NEW). 1981, c. 168, §25 (AMD). 2009, c. 637, §§1, 2 (AMD).

## §872. PROOF OF EQUIPMENT OWNERSHIP FOR EMPLOYERS USING FOREIGN LABORERS

**1**. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Bond worker" means a person who has been described under 8 United States Code, Section 1101(a)(15)(H)(ii) and granted permission to work temporarily in the United States. [2009, c. 637, §3 (NEW).]

B. "Logging equipment" means equipment used directly in the cutting and transporting of logs to the roadside, the production of wood chips in the field, the construction of logging roads and the transporting of logs or other wood products off-site or on roadways. [2009, c. 637, §3 (NEW).]

[ 2009, c. 637, §3 (RPR) .]

**2**. **Proof of ownership required.** An employer in this State who applies for a bond worker in a logging occupation shall provide proof of the employer's ownership of any logging equipment used by that worker in the course of employment, including proof of ownership of at least one piece of logging equipment for every 2 bond workers employed by the employer in a logging occupation. The employer shall provide proof of ownership as required by this subsection on a form provided by the Commissioner of Labor. The proof required by this subsection must include, but not be limited to, a receipt for payment for the equipment purchased in a bona fide transaction and documentation of payment of any tax assessed on the equipment pursuant to Title 36, chapter 105 for the year in which the bond worker is employed by the employer. Proof of ownership must be carried in the equipment and, upon request by the department or its designee, the operator of equipment subject to this section shall provide proof of ownership. If proof of ownership is not provided within 30 calendar days of such a request, a fine of not less than $5,000 and not more than $25,000 may be assessed against that employer and collected by the Commissioner of Labor. Notwithstanding section 3, information regarding proof of ownership is not confidential and may be disclosed to the public. If the equipment is leased by the employer, the employer shall provide the name, address and telephone number of the leasing company and its affiliates and subsidiaries; the names, addresses and telephone numbers of the leasing company's owner or owners, its agent and members of its board of directors; and a copy of the lease document. A lease is sufficient to meet the ownership requirement of this section only if it is a bona fide lease and:

A. The lease consists of an arm’s length transaction between unrelated entities or is a transfer of equipment between affiliated companies; [2009, c. 637, §4 (NEW).]

B. The lease document contains a specific duration and lease amount; [2009, c. 637, §4 (NEW).]

C. The lessor is not an entity owned or controlled by a bond worker or a bond worker’s spouse, parent, child, sibling, aunt, uncle or cousin or person related to a bond worker in the same manner by marriage, or by any combination of a bond worker and the bond worker’s family members described in this paragraph; [2011, c. 620, §1 (AMD).]

D. The lessor is a leasing business as evidenced by a lease of logging equipment to at least 3 different, unrelated entities within each of the past 3 years; and [2011, c. 620, §1 (AMD).]

E. The lessor provides proof of payment of personal property tax assessed on the leased equipment. [2011, c. 620, §1 (NEW).]

[ 2011, c. 620, §1 (AMD) .]

**2-A**. **Notification.** An employer filing for certification from the United States Department of Labor to hire a bond worker to operate logging equipment shall at the time of filing notify the Maine Department of Labor and provide, for the year in which the bond worker is employed, the number of bond workers requested; a list of each piece of logging equipment, including serial number, a bond worker will operate; receipts for payment for the logging equipment purchased in bona fide transactions; and documentation of payment of any tax assessed on the logging equipment pursuant to Title 36, chapter 105. An employer shall notify the Maine Department of Labor within 30 calendar days of the date on which a bond worker begins work in the State and shall specify the name of the bond worker and the anticipated locations where the bond worker will be conducting work and shall provide a copy of the United States Customs and Border Protection's entry form for that worker. If the notification is not provided within 30 calendar days of the date on which a bond worker begins work, a fine of not less than $5,000 and not more than $25,000 must be assessed against that employer and collected by the Commissioner of Labor.

[ 2013, c. 1, §42 (COR) .]

**2-B**. **Violation.** Upon an employer's conviction of a violation of subsection 2, the Commissioner of Labor may prohibit the employer from employing bond workers in this State for 2 years.

[ 2011, c. 620, §1 (AMD) .]

**3**. **Equipment covered by federal prevailing wage exempt.** This section does not apply to equipment for which the United States Department of Labor, Division of Foreign Labor Certification has established a prevailing wage under the federal Service Contract Act of 1965 for persons using that equipment.

[ 2005, c. 461, §1 (NEW) .]

**4**. **Enforcement; rules.** The Commissioner of Labor may adopt rules to implement and enforce the provisions of this section, including rules regarding the receipt of documentation and the investigation and prosecution of employer proof of ownership of logging equipment. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2011, c. 620, §1 (AMD) .]

**5**. **Penalty; enforcement.**

[ 2011, c. 620, §1 (RP) .]

**6**. **Assistance.** The Department of Agriculture, Conservation and Forestry and the Department of Administrative and Financial Services, Bureau of Revenue Services shall provide interagency support and field information to assist the Department of Labor in enforcing this section.

[ 2009, c. 637, §9 (AMD);  2011, c. 657, Pt. W, §5 (REV) .]

SECTION HISTORY
2005, c. 461, §1 (NEW).  2009, c. 201, §11 (AMD).  2009, c. 381, §§1-3 (AMD).  2009, c. 637, §§3-9 (AMD).  2011, c. 620, §1 (AMD).  2011, c. 657, Pt. W, §5 (REV).  RR 2013, c. 1, §42 (COR).

## §873. RECRUITMENT OF QUALIFIED WORKERS FOR LOGGING OCCUPATIONS

**1**. **Definitions.**

[ 2011, c. 620, §2 (RP) .]

**2**. **Employer requirements; clearinghouse and reporting.**

[ 2011, c. 620, §2 (RP) .]

**3**. **Clearinghouse requirements.**

[ 2011, c. 620, §2 (RP) .]

**4**. **Department role.**

[ 2011, c. 620, §2 (RP) .]

**4-A**. **Department role.** The Maine Department of Labor shall:

A. In addition to enforcing federal requirements imposed by 20 Code of Federal Regulations, Part 655, Subpart B, through the Bureau of Employment Services assist members of the forest products industry to ensure logging employment opportunities for Maine workers, match qualified applicants with logging employers and provide such other assistance to logging employers as may be appropriate; [2011, c. 620, §2 (NEW).]

B. With input from representatives of the forest industry, provide educational and training opportunities in order for workers who express an interest in the logging industry to obtain necessary skills; and [2011, c. 620, §2 (NEW).]

C. In conjunction with the Department of Education and representatives of the forest and logging industries, develop an entry-level logger training program with the goal of providing new qualified workers to the logging industry. The training program must include classroom and on-the-job training and must be provided through existing community colleges, technical schools or the University of Maine System whenever practicable. [2011, c. 620, §2 (NEW).]

[ 2011, c. 620, §2 (NEW) .]

**5**. **Job offer; skills test.** Upon referral of an applicant by the Maine Department of Labor, Bureau of Employment Services, a logging employer may offer employment to that applicant based on the following factors.

A. An employment offer may be conditioned on a skills test, but only if the employer requires the skills test of all new applicants in that job classification. [2009, c. 637, §10 (NEW).]

B. If a skills test under paragraph A is required, it must be conducted at the area of intended employment, a central location designated by the logging employer, the employer's place of employment or another location within reasonable distance from the applicant's residence. [2011, c. 620, §2 (AMD).]

C. [2011, c. 620, §2 (RP).]

D. An applicant who is rejected from employment due to failing a skills test under paragraph A must be given a written statement of the reason for failure of the skills test. The employer shall provide a copy of the written statement to the Maine Department of Labor. [2011, c. 620, §2 (AMD).]

[ 2011, c. 620, §2 (AMD) .]

**6**. **Contracts with landowners.** A contract for harvesting wood between a logging employer and a landowner must contain a provision that allows the landowner to terminate the contract if the logging employer violates this section or the applicable federal regulations regarding employment of bond workers.

[ 2009, c. 637, §10 (NEW) .]

**7. Penalties.**

[ 2011, c. 620, §2 (RP) .]

**8. Landowner contracts with employers.**

[ 2011, c. 620, §2 (RP) .]

SECTION HISTORY
RR 2009, c. 2, §§73, 74 (COR). 2009, c. 637, §10 (NEW). 2011, c. 620, §2 (AMD).

## §874. FUND ESTABLISHED

***(REPEALED)***

SECTION HISTORY
2009, c. 637, §11 (NEW). 2011, c. 620, §3 (RP).

# Subchapter 10: EMPLOYMENT DURING EXTREME PUBLIC HEALTH EMERGENCY

## §875. EMPLOYMENT LEAVES FOR CAREGIVERS AND PERSONS AFFECTED BY EXTREME PUBLIC HEALTH EMERGENCY

**1. Required leave.** An employer shall grant reasonable and necessary leave from work, with or without pay, for an employee for the following reasons related to an extreme public health emergency:

A. The employee is unable to work because the employee is under individual public health investigation, supervision or treatment related to an extreme public health emergency; [2005, c. 383, §23 (NEW).]

B. The employee is unable to work because the employee is acting in accordance with an extreme public health emergency order; [2005, c. 383, §23 (NEW).]

C. The employee is unable to work because the employee is in quarantine or isolation or is subject to a control measure in accordance with extreme public health emergency information or directions issued to the public, a part of the public or one or more individuals; [2005, c. 383, §23 (NEW).]

D. The employee is unable to work because of a direction given by the employee's employer in response to a concern of the employer that the employee may expose other individuals in the workplace to the extreme public health emergency threat; or [2005, c. 383, §23 (NEW).]

E. The employee is unable to work because the employee is needed to provide care or assistance to one or more of the following individuals: the employee's spouse or domestic partner as defined under Title 18-A, section 1-201, subsection (10-A); the employee's parent; or the employee's child or child for whom the employee is the legal guardian. [2005, c. 383, §23 (NEW).]

For purposes of this subsection, "extreme public health emergency" has the same meaning as in Title 22, section 801, subsection 4-A.

[ 2005, c. 383, §23 (NEW) .]

**2. Exceptions.** An employer who fails to grant a leave under subsection 1 is not in violation of subsection 1 if:

A. The employer would sustain undue hardship from the employee's absence, including the need to downsize for legitimate reasons related to the impact of the extreme public health emergency on the operation of the business; [2005, c. 383, §23 (NEW).]

B. The request for leave is not communicated to the employer within a reasonable time under the circumstances; or [2005, c. 383, §23 (NEW).]

C. The employee to be granted leave under subsection 1, paragraph E is a state, county or municipal employee whose responsibilities are related to services necessary for protecting the public's health and safety in an extreme public health emergency if the employer requires the employee to work, unless there are no other options or persons able to provide care or assist one or more of the individuals listed under subsection 1, paragraph E. [2005, c. 383, §23 (NEW).]

[ 2005, c. 383, §23 (NEW) .]

**3**. **Duration of leave.** Leave granted under subsection 1 must be for the duration of an extreme public health emergency and for a reasonable and necessary time period following the termination of the extreme public health emergency for diseases or conditions that are contracted or exposures that occurred during the extreme public health emergency.

[ 2005, c. 383, §23 (NEW) .]

**4**. **Documentation.** Upon the employee's return to work, the employer has the right to request and receive written documentation from a physician or public health official supporting the employee's leave.

[ 2005, c. 383, §23 (NEW) .]

**5**. **Benefits retained.** The taking of leave under this subchapter may not result in the loss of any employee benefits accrued before the date on which the leave commenced and does not affect the employee's right to health insurance benefits on the same terms and conditions as applicable to similarly situated employees. For any leave that extends beyond the time described in subsection 3, the employer shall allow an employee to continue the employee's benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration or any portion of this extended leave.

[ 2005, c. 383, §23 (NEW) .]

**6**. **Civil penalties.** The Department of Labor may assess civil penalties of up to $200 for each violation of this section if notice of the violation is given to the employer and the department within 6 months of the occurrence.

[ 2005, c. 383, §23 (NEW) .]

**7**. **Application.** This subchapter applies to all public and private employers, including the State and its political subdivisions.

[ 2005, c. 383, §23 (NEW) .]

SECTION HISTORY
2005, c. 383, §23 (NEW).

## Subchapter 11: VETERAN PREFERENCE

### §876. SHORT TITLE

This subchapter may be known and cited as "the Voluntary Veteran Preference Employment Policy Act." [2013, c. 576, §4 (NEW).]

SECTION HISTORY
2013, c. 576, §4 (NEW).

## §877. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2013, c. 576, §4 (NEW).]

**1**. **DD Form 214.** "DD Form 214" means an Armed Forces Report of Transfer or Discharge or its predecessor or successor forms.

[ 2013, c. 576, §4 (NEW) .]

**2**. **Private employer.** "Private employer" means a sole proprietor, corporation, partnership, limited liability company or other entity with one or more employees. "Private employer" does not include the State, a county, a municipality, a township, a school district or a public institution of higher education.

[ 2013, c. 576, §4 (NEW) .]

**3**. **Veteran.** "Veteran" means a person who has served on active duty in the United States Armed Forces, or has served in the national guard of any state or the Reserves of the United States Armed Forces, and was discharged or released with an honorable discharge.

[ 2013, c. 576, §4 (NEW) .]

**4**. **Veteran preference employment policy.** "Veteran preference employment policy" means a private employer's preference for hiring, promoting or retaining a veteran over another qualified applicant or employee.

[ 2013, c. 576, §4 (NEW) .]

SECTION HISTORY
2013, c. 576, §4 (NEW).

## §878. VETERAN PREFERENCE EMPLOYMENT POLICY

A private employer may have a veteran preference employment policy. The policy must be in writing and must be applied uniformly to employment decisions regarding hiring, promotion or retention during a reduction in workforce. A private employer may require that a veteran submit a DD Form 214 to be eligible for the preference. [2013, c. 576, §4 (NEW).]

SECTION HISTORY
2013, c. 576, §4 (NEW).

# Chapter 9: MEDIATION AND ARBITRATION

## Subchapter 1: PANEL OF MEDIATORS

### §881. POLICY

***(REPEALED)***

SECTION HISTORY
1973, c. 617, §1 (RP).

### §882. PANEL

***(REPEALED)***

SECTION HISTORY
1971, c. 506, §1 (AMD). 1971, c. 620, §13 (AMD). 1973, c. 617, §1 (RP).

### §882-A. NOTIFICATION

***(REPEALED)***

SECTION HISTORY
1971, c. 19, (NEW). 1973, c. 617, §1 (RP).

### §883. MEDIATION PROCEDURE; DUTIES

***(REPEALED)***

SECTION HISTORY
1973, c. 617, §1 (RP).

### §884. SERVICES NOT AVAILABLE IF COVERED BY AGREEMENT

***(REPEALED)***

SECTION HISTORY
1973, c. 617, §1 (RP).

### §885. INFORMATION PRIVILEGED

***(REPEALED)***

SECTION HISTORY
1973, c. 617, §1 (RP).

### §891. POLICY

It is declared to be the policy of the State to provide full and adequate facilities for the settlement of disputes between employers and employees or their representatives and other disputes subject to settlement through mediation. [1975, c. 564, §1 (NEW).]

SECTION HISTORY
1975, c. 564, §1 (NEW).

## §892. PANEL

The Panel of Mediators, as established by Title 5, section 12004-B, subsection 3, consisting of not less than 5 nor more than 10 impartial members, must be appointed by the Governor from time to time upon the expiration of the terms of the several members, for terms of 3 years. The Maine Labor Relations Board shall supply to the Governor nominations for filling vacancies. Vacancies occurring during a term must be filled for the unexpired term. Members of the panel are entitled to compensation according to section 965, subsection 2, paragraph C. The costs for services rendered and expenses incurred by the panel and any applicable state cost allocation program charges must be shared equally by the parties to mediation and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the panel is the responsibility of the Executive Director of the Maine Labor Relations Board. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action. [1997, c. 412, §1 (AMD).]

SECTION HISTORY
1975, c. 564, §1 (NEW). 1983, c. 812, §160 (AMD). 1991, c. 92, §1 (AMD). 1991, c. 622, §O2 (AMD). 1991, c. 798, §2 (AMD). 1997, c. 412, §1 (AMD).

## §893. INVOKING MEDIATION SERVICES

Mediation procedures as provided by section 965, subsection 2, shall be followed whenever either party to a controversy requests such services and the Maine Labor Relations Board or its executive director finds that the dispute is subject to settlement through mediation and that it is in the public interest to mediate. [1975, c. 564, §1 (NEW).]

SECTION HISTORY
1975, c. 564, §1 (NEW).

# Subchapter 2: STATE BOARD OF ARBITRATION AND CONCILIATION

## §911. APPOINTMENT AND QUALIFICATION; SALARIES AND EXPENSES

***(REPEALED)***

SECTION HISTORY
1969, c. 450, §§1,2 (AMD). 1971, c. 620, §13 (AMD). 1975, c. 564, §2 (AMD). 1975, c. 771, §279 (AMD). 1979, c. 22, §§1,2 (AMD). 1983, c. 812, §161 (AMD). 1985, c. 294, §§1,3 (RP).

## §912. POWERS AND DUTIES

***(REPEALED)***

SECTION HISTORY

1979, c. 22, §3 (AMD). 1985, c. 294, §§1,3 (RP).

## §913. WITNESSES

***(REPEALED)***

SECTION HISTORY
1979, c. 22, §4 (AMD). 1985, c. 294, §§1,3 (RP).

## §914. RECESS OF NEGOTIATIONS

***(REPEALED)***

SECTION HISTORY
1985, c. 294, §§1,3 (RP).

## §915. NOTIFICATION OF STRIKE; PROCEEDINGS IN SETTLEMENT

***(REPEALED)***

SECTION HISTORY
1975, c. 564, §3 (AMD). 1985, c. 294, §§1,3 (RP).

## §916. INQUIRY INTO CAUSE OF CONTROVERSY; CONCILIATORS; REPORT

***(REPEALED)***

SECTION HISTORY
1971, c. 620, §13 (AMD). 1975, c. 564, §4 (AMD). 1979, c. 22, §5 (AMD). 1985, c. 294, §§1,3 (RP).

## §917. APPLICATION FOR INQUIRY; NOTICE OF HEARING

***(REPEALED)***

SECTION HISTORY
1975, c. 564, §5 (AMD). 1979, c. 22, §6 (RPR). 1985, c. 294, §§1,3 (RP).

## §918. SUBMISSION TO ARBITRATION; DECISION

***(REPEALED)***

SECTION HISTORY
1975, c. 564, §6 (AMD). 1985, c. 294, §§1,3 (RP).

## §919. PROCEDURE IN ARBITRATION

***(REPEALED)***

SECTION HISTORY
1975, c. 564, §7 (AMD). 1979, c. 22, §§7-9 (AMD). 1985, c. 294, §§1,3 (RP).

## §920. SUBMISSION TO LOCAL BOARD; DECISION

***(REPEALED)***

SECTION HISTORY
1975, c. 564, §8 (AMD). 1979, c. 22, §10 (AMD). 1985, c. 294, §§1,3 (RP).

## §921. ADVERTISING OR SOLICITING FOR WORKERS DURING STRIKE OR DISTRUBANCE; EXCEPTIONS; PENALTY

***(REPEALED)***

SECTION HISTORY
1985, c. 294, §§1,3 (RP).

## §922. PROCEEDINGS CONFIDENTIAL

***(REPEALED)***

SECTION HISTORY
1979, c. 22, §11 (AMD). 1985, c. 294, §§1,3 (RP).

# Subchapter 2-A: STATE BOARD OF ARBITRATION AND CONCILIATION

## §931. APPOINTMENT AND QUALIFICATION; SALARIES AND EXPENSES; RULES; REPORTS

The State Board of Arbitration and Conciliation, in this subchapter called the "board," consists of 3 members appointed by the Governor from time to time upon the expiration of the terms of the several members, for terms of 3 years. One member must be an employer of labor or selected from some association representing employers of labor, and another must be an employee or selected from some bona fide trade or labor union. The 3rd member must represent the public interests of the State and serves as chair. Vacancies occurring during a term must be filled for the unexpired term. Members of the board are entitled to receive $150 a day for their services for the time actually employed in the discharge of their official duties. They are entitled to receive their traveling and all other necessary expenses. The costs for services rendered and expenses incurred by the State Board of Arbitration and Conciliation and any state allocation program charges must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by the State Board of Arbitration and Conciliation is the responsibility of the Executive Director of the Maine Labor Relations Board. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action. The executive director shall, annually, on or before July 1st, make a report of the activities of the State Board of Arbitration and Conciliation to the Governor. The board shall from time to time adopt rules of procedure as it determines necessary, including rules of procedure for proceedings under chapter 18. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 175, §1 (AMD).]

Six alternate members, having the same qualifications as members, and 2 being from each category, shall be appointed in the same manner and for the same terms as members and shall, when serving as members of the board, have the same responsibilities and duties and be entitled to the same privileges and emoluments as members. [1985, c. 294, §§2, 3 (NEW).]

When, for any reason, a member of the board does not serve in any particular case, the alternate member having the same qualifications shall act as a member of the board in that case. [1985, c. 294, §§2, 3 (NEW).]

The board's responsibility is to further harmonious labor-management relations in this State. It may serve as a board of inquiry or as a board of conciliation in the private sector, or as a board of arbitration in either the public or private sector, provided that the parties appearing before it so agree. No member of the board may participate in any case in which he has a personal interest. [1985, c. 294, §§2, 3 (NEW).]

Workers shall have full freedom of association, self organization and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from interference, restraint or coercion by their employers or other persons. It shall be the duty of the board to endeavor to settle disputes, strikes and lockouts between employers and employees. [1985, c. 294, §§2, 3 (NEW).]

An employer shall not retaliate against any employee who may have petitioned or sought the assistance of the board pursuant to this subchapter or for having provided information or testimony in this subchapter. [1985, c. 294, §§2, 3 (NEW).]

SECTION HISTORY
1985, c. 294, §§2,3 (NEW). 1987, c. 460, §2 (AMD). 1991, c. 622, §O3 (AMD). 1991, c. 798, §3 (AMD). 2003, c. 670, §1 (AMD). 2007, c. 175, §1 (AMD).

## §931-A. USE OF BOARD MEMBER REPRESENTING THE PUBLIC INTERESTS INSTEAD OF FULL BOARD

The parties may agree to have any controversy that could be handled by the board under this subchapter directed to the board member selected to represent the public interests of the State or to one of the alternates from the same category. If the parties elect to use that board member, the parties must agree on the board member or alternate by name. A board member selected under this section may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the matter before the board member and has the same power to act on any issue and in any manner as the full board has pursuant to this subchapter. [1993, c. 53, §1 (NEW).]

SECTION HISTORY
1993, c. 53, §1 (NEW).

## §931-B. FORESTRY RATE PROCEEDINGS PANEL

***(REPEALED)***

SECTION HISTORY
2003, c. 670, §2 (NEW). 2009, c. 381, §4 (RP).

## §932. SUBPOENA POWERS

The chairman of the board or his alternate may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the matter before it. [1985, c. 294, §§ 2 and 3 (NEW).]

Witnesses subpoenaed by the board shall be allowed the same fees as are paid to witnesses in Superior Court. These fees, together with all necessary expenses of the board, shall be paid by the Treasurer of State on warrants drawn by the State Controller. [1985, c. 294, §§ 2 and 3 (NEW).]

SECTION HISTORY
1985, c. 294, §§2,3 (NEW).

## §933. NOTICE; RECESS OF MEETINGS AND HEARINGS

Except in cases in which the public welfare is involved, a minimum of 3 working days' notice shall be required before the board will convene. [1985, c. 294, §§ 2 and 3 (NEW).]

When the board has taken jurisdiction of a case where a dispute exists, it may, at its discretion, recess the hearings for any reasonable purpose and may call a subsequent meeting as soon as practicable at any appropriate place or time which it may designate for a continuation of the proceedings. [1985, c. 294, §§ 2 and 3 (NEW).]

SECTION HISTORY
1985, c. 294, §§2,3 (NEW).

## §934. CONCILIATION; NOTIFICATION OF DISPUTE; PROCEEDINGS IN SETTLEMENT; REPORT

Whenever it appears to the employer or employees concerned in a labor dispute, or when a strike or lockout is threatened, or actually occurs, he or they may request the services of the board. [1985, c. 294, §§2, 3 (NEW).]

If, when the request or notification is received, it appears that a substantial number of employees in the department, section or division of the business of the employer are involved, the board shall endeavor, by conciliation, to obtain an amicable settlement. If the board is unable to obtain an amicable settlement it shall endeavor to persuade the employer and employees to submit the matter to arbitration. [1985, c. 294, §§2, 3 (NEW).]

The board shall, upon notification, as soon as practicable, visit the place where the controversy exists or arrange a meeting of the interested parties at a convenient place, and shall make careful inquiry into the cause of the dispute or controversy, and the board may, with the consent of the Governor, conduct the inquiry beyond the limits of the State. [1985, c. 294, §§2, 3 (NEW).]

The board shall hear all interested persons who come before it, advise the respective parties what ought to be done by either or both to adjust the controversy, and shall make a confidential written report to the Governor and the Executive Director of the Maine Labor Relations Board. The Governor or executive director shall make the report public if, after 15 days from the date of its receipt, the parties have not resolved the controversy and the public interest would be served by publication. In addition, either the Governor or the executive director may refer the report and recommendations of the board to the Attorney General or other department for appropriate action when it appears that any of the laws of this State may have been violated. [2015, c. 250, Pt. C, §3 (AMD).]

SECTION HISTORY
1985, c. 294, §§2,3 (NEW). 2015, c. 250, Pt. C, §3 (AMD).

## §935. APPLICATION FOR BOARD OF INQUIRY; NOTICE OF HEARING

In cases of controversy, where conciliation, mediation or arbitration is refused by one of the parties or the board has deemed that those processes have been or will be ineffective, either party may request the board to make inquiry. The application for inquiry may be signed by the employer or by a substantial number of the employees in the department, section or division of the business in which the controversy exists or by their

agent or representative or by both parties and, if signed by an agent or representative claiming to represent the employees, the board shall satisfy itself that he is duly authorized to do so. [1985, c. 294, §§ 2 and 3 (NEW).]

Upon receipt of the application for inquiry, the chairman, or in his absence or disability the alternate chairman, through the auspices of the Maine Labor Relations Board, shall give notice of the time and place of hearing and may, at the board's discretion, give public notice by publishing in at least one newspaper the time and place of the hearing. [1985, c. 294, §§ 2 and 3 (NEW).]

The board shall, upon the request of the Governor or the mayor of a city or the selectman of a town, investigate and report upon any labor controversy if, in its opinion, it threatens the public welfare. [1985, c. 294, §§ 2 and 3 (NEW).]

The board, after inquiry, may make and publish a report in the matter, including its findings of fact and recommendations for settling the controversy. [1985, c. 294, §§ 2 and 3 (NEW).]

SECTION HISTORY
1985, c. 294, §§2,3 (NEW).

## §936. SUBMISSION TO ARBITRATION; DECISION

If the case cannot be settled through the process of conciliation, the interested parties may jointly submit the case to arbitration by filing an arbitration application with the Executive Director of the Maine Labor Relations Board. [1985, c. 294, §§ 2, 3 (NEW).]

The chairman of the board shall immediately, after the filing, give notice of the time and place of the hearing to both parties. [1985, c. 294, §§ 2, 3 (NEW).]

SECTION HISTORY
1985, c. 294, §§2,3 (NEW).

## §937. PROCEDURE IN ARBITRATION

The board may hear grievance arbitration matters referred to it pursuant to a collective bargaining agreement. It may hear any labor dispute jointly referred to it for resolution by arbitration by the representatives of management and labor. In cases of arbitration, the parties concerned must submit in writing to the board, the matters which they mutually agree to submit to arbitration and such other details pertinent to the issues involved as they may agree upon. When the matter is submitted to arbitration by the board, the board shall investigate the matter in controversy, shall hear all interested persons who come before it and make an award and written opinion which shall be published by the chairman of the board and shall be binding on the parties who join in the agreement. [1985, c. 294, §§ 2 and 3 (NEW).]

The board may, at any time in the arbitration process, seek a stipulated settlement of the matter submitted to it for resolution provided that settlement is approved by the parties to the dispute. Except as provided in section 972, arbitration proceedings shall be subject to the review provisions of the Uniform Arbitration Act, Title 14, chapter 706. [1985, c. 294, §§ 2 and 3 (NEW).]

SECTION HISTORY
1985, c. 294, §§2,3 (NEW).

## §938. ADVERTISING OR SOLICITING FOR WORKERS DURING STRIKE OR DISTURBANCE; EXCEPTIONS; PENALTY

If any employer, during the continuance of a strike among his employees, or during the continuance of a lockout or other labor trouble among his employees, publicly advertises in newspapers, or by posters or otherwise, for employees, or by himself or his agents solicits persons to work for him to fill the places of strikers, he shall plainly and explicitly mention in the advertisements or oral or written solicitations that a

strike, lockout or other labor disturbance exists. If any employee, during the continuance of a strike, lockout or other labor trouble advertises for or solicits business for a competitor of the employers engaged in the labor dispute, he shall plainly and explicitly mention in the advertisement or oral or written solicitations that a strike, lockout or other labor disturbance exists. This section shall cease to be operative if the board determines that the business of the employer, in respect to which the strike or other labor trouble occurred, is being carried on in the normal and usual manner and to the normal and usual extent. The board shall determine this question as soon as possible, upon the application of the employer. Any person, firm, association or corporation who violates this section shall be punished by a fine not less that $250 nor more than $500. [1985, c. 294, §§ 2 and 3 (NEW).]

SECTION HISTORY
1985, c. 294, §§2,3 (NEW).

## §939. PROCEEDINGS CONFIDENTIAL

Any information disclosed by either party to a dispute to the board or any of its members in carrying out this subchapter shall be confidential, except as may be provided otherwise in this subchapter. [1985, c. 294, §§2 and 3 (NEW).]

SECTION HISTORY
1985, c. 294, §§2,3 (NEW).

# Subchapter 3: ARBITRATION PURSUANT TO COLLECTIVE BARGAINING CONTRACTS

## §951. AGREEMENTS TO ARBITRATE

A written provision in any collective bargaining contract to settle by arbitration a controversy thereafter arising out of such contract or out of the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, or such refusal, herein designated in this subchapter as "a written submission agreement," shall be valid, irrevocable and enforceable, save upon such grounds, independent of the provisions for arbitration, as exist at law or in equity for the revocation of any contract.

## §952. STAY OF PROCEEDINGS

If any action or proceeding be brought in any court upon any issue or controversy referable to arbitration under a written provision in any collective bargaining contract or under an agreement in writing for submission to arbitration of an existing controversy arising out of such collective bargaining contract, the court in which such action or proceeding is pending, upon being satisfied that the issue involved in such action or proceeding is thus referable to arbitration, shall on application of one of the parties stay the trial of the action or proceeding until such arbitration has been had in accordance with the terms of the collective bargaining contract or the written agreement for submission to arbitration, provided the applicant for the stay is not in default in proceeding with such arbitration.

## §953. FAILURE TO ARBITRATE UNDER AGREEMENT

A party aggrieved by the alleged failure, neglect or refusal of another to arbitrate in accordance with any agreement embraced within section 951 may institute proceedings in the Superior Court. Such proceedings shall be for an order directing that such arbitration proceed in the manner provided in the collective bargaining agreement or written submission agreement.

Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by law for the service of process in civil actions. The court shall hear the parties, and upon being satisfied that the making of the collective bargaining contract or the written submission agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an

order directing the parties to proceed to arbitration in accordance with the terms of the collective bargaining contract or the written submission agreement. If the making of the collective bargaining contract or of the written submission agreement for arbitration or the failure, neglect or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial is demanded by the party alleged to be in default, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by law for referring to a jury issues in actions not triable of right by a jury or may specially call a jury for that purpose. If the jury find that no collective bargaining contract or written submission agreement for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that a collective bargaining contract or written submission agreement for arbitration was made and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof. [1965, c. 425, §16 (AMD).]

SECTION HISTORY
1965, c. 425, §16 (AMD).

## §954. APPOINTMENT OF ARBITRATORS OR UMPIRES

If in the agreement provision is made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method is provided therein, or if a method is provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in agreement, the arbitration shall be by a single arbitrator.

## §955. APPLICATION HEARD AS MOTION

Any application to the court under this subchapter shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise expressly provided.

## §956. WITNESSES BEFORE ARBITRATORS; FEES; COMPELLING ATTENDANCE

The arbitrators selected either as prescribed in this subchapter or otherwise, or a majority of them, may summon in writing any person to attend before them, or any of them, as a witness and in a proper case to bring with him or them any book, record, document or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before the Superior Court. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the Superior Court. If any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon complaint, any Justice of the Superior Court may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the State of Maine.

## §957. AWARDS; CONFIRMATION; JURISDICTION; PROCEDURE

If the parties in their collective bargaining contract or written submission agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified or corrected as prescribed in sections 958 and 959. In the absence of such provision in the collective bargaining contract or written submission agreement of the parties, such

application to have judgment entered upon the award may be made to the Superior Court in the county within which such award was made. Notice of application shall be served upon the adverse party. If the adverse party is a resident of the State, such service shall be made upon the adverse party or his attorney as prescribed by law for service of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served in like manner as other process of the court is served upon nonresidents.

## §958. VACATION OF AWARD; GROUNDS; REHEARING

In any of the following cases the Superior Court in and for the county wherein the award was made may make an order vacating the award upon the application of any party to the arbitration:

**1**. **Corruption, fraud or undue means.** Where the award was procured by corruption, fraud or undue means;

**2**. **Partiality or corruption in arbitrators.** Where there was obvious partiality or corruption in the arbitrators, or any of them;

**3**. **Abuse of discretion by arbitrators.** Where the arbitrators were guilty of abuse of discretion by which the rights of any party have been prejudiced; or

**4**. **Arbitrators exceeded powers.** Where the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

Where an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

## §959. MODIFICATION OR CORRECTION OF AWARD; GROUNDS; ORDER

The Superior Court in and for the county wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award.

## §960. APPLICABILITY OF PROVISIONS

This subchapter shall not apply to any provision or agreement relative to arbitration contained in a collective bargaining contract entered into prior to August 28, 1957, or after October 6, 1967, or to any agreement to submit to arbitration an existing controversy entered into prior to August 28, 1957, or after October 6, 1967. [1969, c. 287, §2 (AMD).]

SECTION HISTORY
1969, c. 287, §2 (AMD).

# Chapter 9-A: MUNICIPAL PUBLIC EMPLOYEES LABOR RELATIONS LAW

## §961. PURPOSE

It is declared to be the public policy of this State and it is the purpose of this chapter to promote the improvement of the relationship between public employers and their employees by providing a uniform basis for recognizing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in collective bargaining for terms and conditions of employment. [1969, c. 424, §1 (NEW).]

SECTION HISTORY
1969, c. 424, §1 (NEW).

## §962. DEFINITIONS

As used in this chapter the following terms shall, unless the context requires a different interpretation, have the following meanings. [1969, c. 424, §1 (NEW).]

**1**. **Board.** "Board" means the Maine Labor Relations Board referred to in section 968.

[ 1975, c. 564, §9 (AMD) .]

**2**. **Bargaining agent.** "Bargaining agent" means any lawful organization, association or individual representative of such organization or association which has as its primary purpose the representation of employees in their employment relations with employers, and which has been determined by the public employer or by the executive director of the board to be the choice of the majority of the unit as their representative.

[ 1973, c. 458, §1 (AMD) .]

**2-A**. **Bureau.**

[ 1975, c. 564, §10 (RP) .]

**3**. **Commissioner.**

[ 1971, c. 620, §13 (RP) .]

**4**. **Department.**

[ 1971, c. 620, §13 (RP) .]

**4-A**. **Director.**

[ 1975, c. 564, §11 (RP) .]

**4-B**. **Executive director.** "Executive director" means the Executive Director of the Maine Labor Relations Board.

[ 1975, c. 564, §12 (AMD) .]

**5**. **Professional employee.** "Professional employee" means any employee engaged in work:

A. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; [1969, c. 424, §1 (NEW).]

B. Involving the consistent exercise of discretion and judgment in its performance; [1969, c. 424, §1 (NEW).]

C. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; and [1969, c. 424, §1 (NEW).]

D. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes. [1969, c. 424, §1 (NEW).]

[ 1975, c. 564, §§9-12 (AMD) .]

**6**. **Public employee.** "Public employee" means any employee of a public employer, except any person:

A. Elected by popular vote; or [1969, c. 424, §1 (NEW).]

B. Appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, except that appointees to county offices shall not be excluded under this paragraph unless defined as a county commissioner under Title 30-A, section 1302; or [1987, c. 737, Pt. C, §§70, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. Whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head, body, department head or division head; or [1973, c. 458, §3 (AMD).]

D. Who is a department head or division head appointed to office pursuant to statute, ordinance or resolution for an unspecified term by the executive head or body of the public employer; or [1969, c. 424, §1 (NEW).]

E. Who is a superintendent or assistant superintendent of a school system; or [1969, c. 424, §1 (NEW).]

F. Who has been employed less than 6 months. [1969, c. 578, §1 (RPR).]

G. Who is a temporary, seasonal or on-call employee; or [1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 1989, c. 654, §1 (AMD); 1989, c. 654, §13 (AFF).]

H. Who is a prisoner employed by a public employer during the prisoner's term of imprisonment, except for prisoners who are in a work release program or supervised community confinement pursuant to Title 34-A, section 3036-A. [2013, c. 133, §21 (AMD).]

[ 2013, c. 133, §21 (AMD) .]

**7**. **Public employer.** "Public employer" means:

A. Any officer, board, commission, council, committee or other persons or body acting on behalf of:

(1) Any municipality or any subdivision of a municipality;

(2) Any school, water, sewer, fire or other district;

(3) The Maine Turnpike Authority;

(5) Any county or subdivision of a county;

(6) The Maine Public Employees Retirement System;

(7) The Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf; or

(8) Any innovative, autonomous public school, innovative public school district, innovative public school zone or teacher-led school created and operated under Title 20-A, section 6212 or 6213; [2013, c. 303, §6 (AMD).]

B. Any employer not covered by any other state or federal collective bargaining law that is:

(1) Established directly by the State or a political subdivision to constitute a department or administrative office of government; or

(2) Administered by individuals responsible to public officials or to the general electorate. [1991, c. 576, (NEW).]

If any public employer, as defined in this or any other section, controls the operations of another employer to the extent that the public employer deprives that other employer of sufficient control over its own employees to enable it to bargain with a labor organization representing those employees, the public employer must be treated as the employer of those employees for the purposes of this chapter.

[ 2013, c. 303, §6 (AMD) .]

SECTION HISTORY
1969, c. 424, §1 (NEW). 1969, c. 578, §§1,2 (AMD). 1971, c. 609, §1 (AMD). 1971, c. 620, §13 (AMD). 1973, c. 458, §§1-3 (AMD). 1975, c. 9, (AMD). 1975, c. 564, §§9-12 (AMD). 1981, c. 137, §1 (AMD). 1981, c. 529, §5 (AMD). 1981, c. 698, §117 (AMD). 1987, c. 737, §§C70,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 499, §12 (AMD). 1989, c. 654, §§1,2,13 (AMD). 1991, c. 576, (AMD). 1991, c. 843, §4 (AMD). 1993, c. 410, §L45 (AMD). 1997, c. 698, §1 (AMD). 1999, c. 775, §13 (AMD). 2001, c. 374, §6 (AMD). 2003, c. 646, §3 (AMD). 2005, c. 279, §15 (AMD). 2005, c. 662, §A43 (AMD). 2007, c. 58, §3 (REV). 2009, c. 142, §11 (AMD). 2011, c. 446, §3 (AMD). 2013, c. 133, §21 (AMD). 2013, c. 303, §6 (AMD).

## §963. RIGHT OF PUBLIC EMPLOYEES TO JOIN OR REFRAIN FROM JOINING LABOR ORGANIZATIONS

A person may not directly or indirectly interfere with, intimidate, restrain, coerce or discriminate against a public employee or a group of public employees in the free exercise of their rights, given by this section, to voluntarily: [2007, c. 415, §2 (RPR).]

**1**. **Join a union.** Join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining or in the free exercise of any other right under this chapter; or

[ 2007, c. 415, §2 (NEW) .]

**2**. **Not join a union.** Refrain from joining or participating in the activities of organizations for the purposes of representation and collective bargaining, except that an employee may be required to pay to the organization that is the bargaining agent for the employee a service fee that represents the employee's pro rata share of those expenditures that are germane to the organization's representational activities.

[ 2007, c. 415, §2 (NEW) .]

SECTION HISTORY
1969, c. 424, §1 (NEW). 2007, c. 415, §2 (RPR).

# §964. PROHIBITED ACTS OF PUBLIC EMPLOYERS, PUBLIC EMPLOYEES AND PUBLIC EMPLOYEE ORGANIZATIONS

**1**. **Public employer prohibitions.** Public employers, their representatives and their agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 963; [1969, c. 424, §1 (NEW).]

B. Encouraging or discouraging membership in any employee organization by discrimination in regard to hire or tenure of employment or any term or condition of employment; [1969, c. 424, §1 (NEW).]

C. Dominating or interfering with the formation, existence or administration of any employee organization; [1969, c. 424, §1 (NEW).]

D. Discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter; [1969, c. 424, §1 (NEW).]

E. Refusing to bargain collectively with the bargaining agent of its employees as required by section 965; [1969, c. 424, §1 (NEW).]

F. Blacklisting of any employee organization or its members for the purpose of denying them employment; [2007, c. 415, §3 (AMD).]

G. Requiring an employee to join a union, employee association or bargaining agent as a member; and [2007, c. 415, §4 (NEW).]

H. Terminating or disciplining an employee for not paying union dues or fees of any type. [2007, c. 415, §5 (NEW).]

[ 2007, c. 415, §§3-5 (AMD) .]

**2**. **Public employee prohibitions.** Public employees, public employee organizations, their agents, members and bargaining agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 963 or a public employer in the selection of his representative for purposes of collective bargaining or the adjustment of grievances; [1969, c. 424, §1 (NEW).]

B. Refusing to bargain collectively with a public employer as required by section 965; [1969, c. 424, §1 (NEW).]

C. Engaging in

(1) A work stoppage;

(2) A slowdown;

(3) A strike; or

(4) The blacklisting of any public employer for the purpose of preventing it from filling employee vacancies. [1969, c. 424, §1 (NEW).]

[ 1969, c. 424, §1 (NEW) .]

**3**. **Violations.** Violations of this section shall be processed by the board in the manner provided in section 968, subsection 5.

[ 1971, c. 609, §2 (RPR) .]

SECTION HISTORY

1969, c. 424, §1 (NEW). 1971, c. 609, §2 (AMD). 2007, c. 415, §§3-5 (AMD).

## §964-A. CONTINUATION OF GRIEVANCE ARBITRATION PROVISIONS

**1**. **Contract signed before October 1, 2005.** If a contract between a public employer and a bargaining agent signed prior to October 1, 2005 expires prior to the parties' agreement on a new contract, the grievance arbitration provisions of the expired contract pertaining to disciplinary action remain in effect until the parties execute a new contract.

[ 2005, c. 324, §1 (NEW) .]

**2**. **Contract signed after October 1, 2005.** If a contract between a public employer and a bargaining agent signed after October 1, 2005 expires prior to the parties' agreement on a new contract, the grievance arbitration provisions of the expired contract remain in effect until the parties execute a new contract. In any arbitration that is conducted pursuant to this subsection, an arbitrator shall apply only those provisions enforceable by virtue of the static status quo doctrine and may not add to, restrict or modify the applicable static status quo following the expiration of the contract unless the parties have otherwise agreed in the collective bargaining agreement. All such grievances that are appealed to arbitration are subject exclusively to the grievance and arbitration process contained in the expired agreement, and the board does not have jurisdiction over such grievances. The arbitrator's determination is subject to appeal, pursuant to the Uniform Arbitration Act. Disputes over which provisions in an expired contract are enforceable by virtue of the static status quo doctrine first must be resolved by the board, subject to appeal pursuant to applicable law. The grievance arbitration is stayed pending resolution of this issue by the board. The board may adopt rules as necessary to establish a procedure to implement the intent of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Nothing in this subsection expands, limits or modifies the scope of any grievance arbitration provisions, including procedural requirements.

[ 2005, c. 324, §1 (NEW) .]

SECTION HISTORY
1997, c. 773, §1 (NEW). 1997, c. 773, §7 (AFF). 2005, c. 324, §1 (RPR).

## §965. OBLIGATION TO BARGAIN

**1**. **Negotiations.** It is the obligation of the public employer and the bargaining agent to bargain collectively. "Collective bargaining" means, for the purposes of this chapter, their mutual obligation:

A. To meet at reasonable times; [1969, c. 424, §1 (NEW).]

B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, as long as the parties have not otherwise agreed in a prior written contract. This obligation is suspended during the period between a referendum approving a new regional school unit and the operational date of the regional school unit, as long as the parties meet at reasonable times during that period; [2009, c. 107, §5 (AMD).]

C. To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration, except that by such obligation neither party may be compelled to agree to a proposal or be required to make a concession and except that public employers of teachers shall meet and consult but not negotiate with respect to educational policies; for the purpose of this paragraph, educational policies may not include wages, hours, working conditions or contract grievance arbitration; [2009, c. 107, §5 (AMD).]

D. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation but may not exceed 3 years; and [2009, c. 107, §5 (AMD).]

E. To participate in good faith in the mediation, fact-finding and arbitration procedures required by this section. [1973, c. 788, §119 (AMD).]

Whenever wages, rates of pay or any other matter requiring appropriation of money by any municipality or county are included as a matter of collective bargaining conducted pursuant to this chapter, it is the obligation of the bargaining agent to serve written notice of request for collective bargaining on the public employer at least 120 days before the conclusion of the current fiscal operating budget, except that this requirement is waived in the event that a bargaining agent of a newly formed bargaining unit is recognized or certified during the period not more than 120 days nor less than 30 days prior to the end of the fiscal period. The 120-day notice requirement is also waived with respect to regional school units formed pursuant to Title 20-A, chapter 103-A, subchapter 2 prior to their first year of operation.

[ 2009, c. 107, §5 (AMD) .]

**2. Mediation.**

A. It is the declared policy of the State to provide full and adequate facilities for the settlement of disputes between employers and employees or their representatives and other disputes subject to settlement through mediation. [1975, c. 564, §13 (AMD).]

B. Mediation procedures must be followed whenever either party to a controversy requests such services prior to arbitration, or, in the case of disputes affecting public employers, public employees or their respective representatives as defined, whenever requested by either party prior to arbitration or at any time on motion of the Maine Labor Relations Board or its executive director. Requests for grievance mediation are handled in accordance with paragraph F. [2001, c. 92, §1 (AMD).]

C. The Panel of Mediators, consisting of not less than 5 nor more than 10 impartial members, must be appointed by the Governor from time to time upon the expiration of the terms of the several members, for terms of 3 years. The Maine Labor Relations Board shall supply to the Governor nominations for filling vacancies. Vacancies occurring during a term must be filled for the unexpired term. Members of the panel are entitled to a fee for services in the amount of $300 for up to 4 hours of mediation services provided and $300 for each consecutive period of up to 4 hours thereafter and also are entitled to traveling and all other necessary expenses. Notwithstanding the provisions of Title 5, section 12003-A, subsection 9, members of the panel who provide mediation services in more than one dispute in a given day are entitled to the compensation as provided in this paragraph in each such case. The necessary expenses incurred by the members must be allocated to the mediation session that required the costs. The costs for services rendered and expenses incurred by members of the panel and any state cost allocation program charges must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the panel is the responsibility of the Executive Director of the Maine Labor Relations Board. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action. [2013, c. 553, §1 (AMD).]

D. The employer, union or employees involved in collective bargaining shall notify the Executive Director of the Maine Labor Relations Board, in writing, at least 30 days prior to the expiration of a contract, or 30 days prior to entering into negotiations for a first contract between the employer and the employees, or whenever a dispute arises between the parties threatening interruption of work, or under both conditions. [1975, c. 564, §15 (AMD).]

E. The Executive Director of the Maine Labor Relations Board shall serve as Executive Director of the Panel of Mediators. He shall annually, on or before the first day of July make a report to the Governor. The Executive Director of the Maine Labor Relations Board, upon request of one or both of the parties to a dispute between an employer and its employees, shall, or upon his own motion or motion of the Maine Labor Relations Board may, proffer the services of one or more members of the panel to be selected by him, to serve as mediator or mediators in such a dispute. The member or members so selected shall exert every reasonable effort to encourage the parties to the dispute to settle their differences by conference or other peaceful means. If the mediator or mediators are unable to accomplish this objective and to obtain an amicable settlement of the dispute between the parties, it shall then be the duty of the mediator or mediators to advise the parties of the services available to assist them in settlement of their dispute. At this time, the mediator or mediators shall submit a written report to the executive director stating the action or actions that have been taken and the results of their endeavors. [1979, c. 541, Pt. A, §170 (AMD).]

F. The services of the Panel of Mediators must be provided for grievance mediation only when the parties jointly agree to request grievance mediation services. Notwithstanding this option, neither party is obligated under subsection 1 to bargain over the inclusion of grievance mediation procedures in a collective bargaining agreement. The services of the Panel of Mediators are always available as a technique for impasse resolution in contract negotiations and may be invoked as described in paragraph B. [2001, c. 92, §2 (RPR).]

G. Any information disclosed by either party to a dispute to the panel or any of its members in the performance of this subsection shall be privileged. [1973, c. 617, §2 (RPR).]

[ 2013, c. 553, §1 (AMD) .]

**3. Fact-finding.**

A. If the parties, either with or without the services of a mediator, are unable to effect a settlement of their controversy, they may jointly agree either to call upon the Maine Labor Relations Board to arrange for fact-finding services and recommendations to be provided by the Maine Board of Arbitration and Conciliation, or to pursue some other mutually acceptable fact-finding procedure, including use of the Federal Mediation and Conciliation Service or the American Arbitration Association according to their respective procedures, rules and regulations. [1975, c. 564, §17 (RPR).]

B. If the parties do not jointly agree to call upon the Maine Labor Relations Board or to pursue some other procedure, either party to the controversy may request the executive director to assign a fact-finding panel. If so requested, the executive director shall appoint a fact-finding panel, ordinarily of 3 members, in accordance with rules and procedures prescribed by the board for making the appointment. The fact-finding panel shall be appointed from a list maintained by the board and drawn up after consultation with representatives of state and local government administrators, agencies with industrial relations and personnel functions and representatives of employee organizations and of employers. Any person who has actively participated as the mediator in the immediate proceedings for which fact-finding has been called may not sit on that fact-finding panel. The panel shall hear the contending parties to the controversy. The panel may request statistical data and reports on its own initiative in addition to the data regularly maintained by the Bureau of Labor Standards, and has the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them. The members of the fact-finding panel shall submit their findings and recommendations only to the parties and to the Executive Director of the Maine Labor Relations Board. [1995, c. 2, §61 (COR).]

C. The parties shall have a period of 30 days, after the submission of findings and recommendations from the fact finders, in which to make a good faith effort to resolve their controversy. If the parties have not resolved their controversy by the end of said period, either party or the Executive Director of the Maine Labor Relations Board may, but not until the end of said period unless the parties otherwise jointly agree, make the fact-finding and recommendations public. [1975, c. 564, §17 (RPR).]

D. If the parties do not agree to follow the fact-finding procedures outlined in paragraph A, they may jointly apply to the executive director or his designee to waive fact-finding. The executive director or his designee may accept or refuse to accept the parties' agreement to waive fact-finding and his decision shall not be reviewable. [1977, c. 696, §204 (AMD).]

[ 1995, c. 2, §61 (COR) .]

**4**. **Arbitration.** In addition to the 30-day period referred to in subsection 3, the parties shall have 15 more days, making a total period of 45 days from the submission of findings and recommendations, in which to make a good faith effort to resolve their controversy.

If the parties have not resolved their controversy by the end of said 45-day period, they may jointly agree to an arbitration procedure which will result in a binding determination of their controversy. Such determinations will be subject to review by the Superior Court in the manner specified by section 972.

If they do not jointly agree to such an arbitration procedure within 10 days after the end of said 45-day period, then either party may, by written notice to the other, request that their differences be submitted to a board of 3 arbitrators. The bargaining agent and the public employer shall within 5 days of such request each select and name one arbitrator and shall immediately thereafter notify each other in writing of the name and address of the person so selected. The 2 arbitrators so selected and named shall, within 10 days from such request, agree upon and select and name a neutral arbitrator. If either party shall not select its arbitrator or if the 2 arbitrators shall fail to agree upon, select and name a neutral arbitrator within said 10 days, either party may request the American Arbitration Association to utilize its procedures for the selection of the neutral arbitrator. As soon as possible after receipt of such request, the neutral arbitrator will be selected in accordance with rules and procedures prescribed by the American Arbitration Association for making such selection. The neutral arbitrator so selected will not, without the consent of both parties, be the same person who was selected as mediator pursuant to subsection 2 nor any member of the fact-finding board selected pursuant to subsection 3. As soon as possible after the selection of the neutral arbitrator, the 3 arbitrators or if either party shall not have selected its arbitrator, the 2 arbitrators, as the case may be, shall meet with the parties or their representatives, or both, forthwith, either jointly or separately, make inquiries and investigations, hold hearings, or take such other steps as they deem appropriate. If the neutral arbitrator is selected by utilizing the procedures of the American Arbitration Association, the arbitration proceedings will be conducted in accordance with the rules and procedures of the American Arbitration Association. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the arbitrators may be received in evidence. The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them for determination.

If the controversy is not resolved by the parties themselves, the arbitrators shall proceed as follows: With respect to a controversy over salaries, pensions and insurance, the arbitrators will recommend terms of settlement and may make findings of fact; such recommendations and findings will be advisory only and will be made, if reasonably possible, within 30 days after the selection of the neutral arbitrator; the arbitrators may in their discretion, make such recommendations and findings public, and either party may make such recommendations and findings public if agreement is not reached with respect to such findings and recommendations within 10 days after their receipt from the arbitrators; with respect to a controversy over subjects other than salaries, pensions and insurance, the arbitrators shall make determinations with respect thereto if reasonably possible within 30 days after the selection of the neutral arbitrator; such determinations may be made public by the arbitrators or either party; and if made by a majority of the arbitrators, such determinations will be binding on both parties and the parties will enter an agreement or take whatever

other action that may be appropriate to carry out and effectuate such binding determinations; and such determinations will be subject to review by the Superior Court in the manner specified by section 972. The results of all arbitration proceedings, recommendations and awards conducted under this section shall be filed with the Maine Labor Relations Board at the offices of its executive director simultaneously with the submission of the recommendations and award to the parties. In the event the parties settle their dispute during the arbitration proceeding, the arbitrator or the chairman of the arbitration panel will submit a report of his activities to the Executive Director of the Maine Labor Relations Board not more than 5 days after the arbitration proceeding has terminated.

[ 1975, c. 564, §18 (AMD) .]

**5**. **Costs.** The costs for the services of the mediator, the members of the fact-finding board and of the neutral arbitrator including, if any, per diem expenses, and actual and necessary travel and subsistence expenses and the costs of hiring the premises where any mediation, fact-finding or arbitration proceedings are conducted, must be shared equally by the parties to the proceedings. All other costs must be assumed by the party incurring them.

[ 1991, c. 622, Pt. O, §5 (AMD) .]

**6**. **Arbitration administration.** The cost for services rendered and expenses incurred by the State Board of Arbitration and Conciliation, as defined in section 931, and any state cost allocation program charges must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the State Board of Arbitration and Conciliation is the responsibility of the executive director. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action.

[ 1991, c. 798, §5 (AMD) .]

SECTION HISTORY
1969, c. 424, §1 (NEW). 1969, c. 578, §§2-A,2-B (AMD). 1971, c. 609, §3 (AMD). 1973, c. 458, §§4-8 (AMD). 1973, c. 617, §2 (AMD). 1973, c. 788, §119 (AMD). 1975, c. 361, §§1,2 (AMD). 1975, c. 564, §§13-19 (AMD). 1975, c. 623, §§37-E (AMD). 1975, c. 717, §6 (AMD). 1975, c. 771, §280 (AMD). 1977, c. 696, §204 (AMD). 1979, c. 541, §A170 (AMD). 1981, c. 137, §2 (AMD). 1985, c. 46, (AMD). 1987, c. 468, §§2,4 (AMD). 1987, c. 786, §19 (AMD). 1989, c. 502, §A108 (AMD). 1991, c. 92, §2 (AMD). 1991, c. 622, §§O4-6 (AMD). 1991, c. 798, §§4,5 (AMD). RR 1995, c. 2, §61 (COR). 1997, c. 412, §2 (AMD). 2001, c. 92, §§1,2 (AMD). 2009, c. 107, §5 (AMD). 2013, c. 553, §1 (AMD).

# §966. BARGAINING UNIT; HOW DETERMINED

**1**. **Bargaining unit standards.** In the event of a dispute between the public employer and an employee or employees as to the appropriateness of a unit for purposes of collective bargaining or between the public employer and an employee or employees as to whether a supervisory or other position is included in the bargaining unit, the executive director or his designee shall make the determination, except that anyone excepted from the definition of public employee under section 962 may not be included in a bargaining unit. The executive director or his designee conducting unit determination proceedings shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them. In determining whether a supervisory position should be excluded from the proposed bargaining unit, the executive director or his designee shall consider, among other criteria, if the principal functions of the position are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing a collective bargaining agreement or establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards. Nothing in this chapter is intended to require the exclusion of principals, assistant principals, other supervisory employees from school system bargaining units which include teachers and nurses in supervisory positions.

[ 1975, c. 697, §1 (AMD) .]

**2**. **Bargaining unit compatibility.** The executive director of the board or his designee shall decide in each case whether, in order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter and in order to insure a clear and identifiable community of interest among employees concerned, the unit appropriate for purposes of collective bargaining shall be the public employer unit or any subdivision thereof. No unit shall include both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit, except that teachers may be included in a unit consisting of other certificated employees.

[ 1975, c. 564, §20 (RPR) .]

**3**. **Unit clarification.** Where there is a certified or currently recognized bargaining representative and where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit, any public employer or any recognized or certified bargaining agent may file a petition for a unit clarification provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation.

[ 1975, c. 697, §2 (NEW) .]

**4**. **Unit merger; same bargaining agent.** If there is the same certified or currently recognized bargaining representative of public employees in multiple bargaining units with the same public employer, the public employer or certified or recognized bargaining representative may file a petition with the executive director to merge those bargaining units. Upon the finding of the executive director or the director's designee that the expanded unit would conform with the requirements set forth in this subsection, the executive director shall order an election within each bargaining unit to determine whether a majority of the employees voting in each bargaining unit wish to be within the expanded unit. The only question on the ballot in a merger election is approval or disapproval of the proposed merger. The executive director or the director's designee shall certify the bargaining agent for an expanded unit consisting of any bargaining units in which a majority of the employees voting approved the merger.

A. After an expanded unit is certified, the parties shall then bargain over modifications needed in order to provide for the wages, hours and working conditions or contract grievance arbitration for the newly included positions in any existing collective bargaining agreement or any collective bargaining agreement being negotiated.

When there is an unexpired collective bargaining agreement in the merged bargaining unit with a different expiration date from any other collective bargaining agreement in the merged bargaining unit, all contracts must be honored to their expiration dates unless mutually agreed to otherwise by the public employer and the bargaining agent. Collective bargaining agreements may be bargained on an interim basis in any merged bargaining unit so that all collective bargaining agreements expire on the same date. [1993, c. 38, §1 (AMD).]

B. If a petition has been filed by a competing organization for decertification of the current bargaining agent for any of the bargaining units subject to the merger, then the decertification petition takes precedence over a petition to merge bargaining units. [1989, c. 236, (NEW).]

C. A public employer or certified or recognized bargaining representative may not file more than once a year with the executive director to merge or combine bargaining units for the same bargaining unit. [1989, c. 236, (NEW).]

D. The executive director or the director's designee conducting unit merger proceedings may administer oaths and may require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relating to the issues presented to the executive director or the director's designee. [1989, c. 236, (NEW).]

E. A bargaining unit composed of a majority of supervisors may not merge under this subsection with any other bargaining unit. [1989, c. 236, (NEW).]

F. A bargaining unit composed of teachers may not merge under this subsection with a bargaining unit of nonprofessional employees. [1989, c. 236, (NEW).]

[ 1993, c. 38, §1 (AMD) .]

SECTION HISTORY
1969, c. 424, §1 (NEW). 1969, c. 578, §3 (AMD). 1971, c. 609, §4 (AMD). 1973, c. 458, §9 (AMD). 1975, c. 564, §20 (RPR). 1975, c. 697, §§1,2 (AMD). 1989, c. 236, (AMD). 1993, c. 38, §1 (AMD).

## §967. DETERMINATION OF BARGAINING AGENT

**1**. **Voluntary recognition.** Any public employee organization may file a request with a public employer alleging that a majority of the public employees in an appropriate bargaining unit wish to be represented for the purpose of collective bargaining between the public employer and the employees' organization. Such request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include a demonstration of majority support. Such request for recognition shall be granted by the public employer, unless the public employer desires that an election determine whether the organization represents a majority of the members in the bargaining unit.

[ 1969, c. 424, §1 (NEW) .]

**2**. **Elections.** The executive director of the board, or a designee, upon signed request of a public employer alleging that one or more public employees or public employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of public employees, or upon signed petition of at least 30% of a bargaining unit of public employees that they desire to be represented by an organization, shall conduct a secret ballot election to determine whether the organization represents a majority of the members in the bargaining unit. Such an election may be conducted at suitable work locations or through

the United States mail, and the procedures adopted and employed must ensure that neither the employee organizations or the management representatives involved in the election have access to information that would identify a voter.

The ballot shall contain the name of such organization and that of any other organization showing written proof of at least 10% representation of the public employees within the unit, together with a choice for any public employee to designate that he does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and no one of the 3 or more choices receives a majority vote of the public employees voting, a run-off election shall be held. The run-off ballot shall contain the 2 choices which received the largest and second-largest number of votes. When an organization receives the majority of votes of those voting, the executive director of the board shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit shall be recognized by the public employer as the sole and exclusive bargaining agent for all of the employees in the bargaining unit unless and until a decertification election by secret ballot shall be held and the bargaining agent declared by the executive director of the board as not representing a majority of the unit.

Whenever 30% of the employees in a certified bargaining unit petition for a bargaining agent to be decertified, the procedures for conducting an election on the question shall be the same as for representation as bargaining agent hereinbefore set forth.

[ 1991, c. 622, Pt. O, §7 (AMD) .]

No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question concerning unit or representation may be raised except during the period not more than 90 nor less than 60 days prior to the expiration date of the agreement. The not more than 90-day nor less than 60-day period prior to the expiration date of an agreement regarding unit determination and representation shall not apply to matters of unit clarification. [1979, c. 199, (AMD).]

The bargaining agent certified by the executive director of the board as the exclusive bargaining agent shall be required to represent all the public employees within the unit without regard to membership in the organization certified as bargaining agent, provided that any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect and if the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of such grievance. [1971, c. 609, §7 (AMD).]

SECTION HISTORY
1969, c. 424, §1 (NEW). 1969, c. 578, §§4,5 (AMD). 1971, c. 609, §§5-8 (AMD). 1975, c. 564, §21 (AMD). 1979, c. 199, (AMD). 1991, c. 622, §O7 (AMD).

## §968. MAINE LABOR RELATIONS BOARD; POWERS AND DUTIES

**1**. **Maine Labor Relations Board.** The Maine Labor Relations Board, established by Title 5, section 12004-B, subsection 2, consists of 3 members and 6 alternates appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over labor matters and to confirmation by the Legislature. The Governor, in making appointments, shall name one member and 2 alternates to represent employees, one member and 2 alternates to represent employers and one member and 2 alternates to represent the public. The member representing the public serves as the board's chair and the alternate representing the public serves as an alternate chair. Members of the board are entitled to compensation according to the provisions of Title 5, chapter 379. The alternates are entitled to compensation at the same per diem rate as the member that the alternate replaces. The term of each member and each alternate is 4 years, except that of the members and alternates first appointed, one member and 2 alternates are appointed for a term of 4 years, one member and 2 alternates are appointed for a term of 3 years and one member and

2 alternates are appointed for a term of 2 years. The members of the board, its alternates and its employees are entitled to receive necessary expenses. Per diem and necessary expenses for members and alternates of the board, as well as state cost allocation program charges, must be shared equally by the parties to any proceeding at which the board presides and must be paid into a special fund administered by the board from which all costs must be paid. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action. At its discretion, the board may allocate all costs to a party that presents a frivolous complaint or defense or that commits a blatant violation of the applicable collective bargaining law. When the board meets on administrative or other matters that do not concern the interests of particular parties or when any board member presides at a prehearing conference, the members' per diem and necessary expenses must be paid from the board's regular appropriation for these purposes. The executive director and legal or professional personnel employed by the board are members of the unclassified service.

[ 1991, c. 798, §6 (AMD) .]

**2**. **Executive director.** An Executive Director of the Maine Labor Relations Board shall be appointed by the board to serve at their will and pleasure. The person so appointed shall be experienced in the field of labor relations. He shall perform the duties designated by statute and such other duties as shall from time to time be assigned to him by the board. He shall serve as secretary of the board and shall maintain a record of all proceedings before the board. No board member shall serve as executive director.

The salary of the executive director shall be established by the board within salary range 86 and may be adjusted periodically by the board within the limits for salary review procedures established in Title 2, section 6, subsection 5.

[ 1979, c. 663, §160 (AMD) .]

**3**. **Rule-making power.** The board may, after a public hearing, from time to time, adopt such rules of procedure as it deems necessary for the orderly conduct of its business and for carrying out the purposes of this chapter. Such rules shall be published and made available to all interested parties. The board shall also, upon its own initiative or upon request, issue interpretative rules interpreting the provisions of this chapter. Such interpretative rules shall be advisory only and shall not be binding upon any court. Such interpretative rules must be in writing and available to any person interested therein.

[ 1975, c. 564, §24 (AMD) .]

**4**. **Review of representative proceedings.** Any party aggrieved by any ruling or determination of the executive director, or the executive director's designee, under sections 966 and 967 may appeal, within 15 days of the announcement of the ruling or determination, except that in the instance of objections to the conduct of an election or challenged ballots the time period is 5 working days, to the Maine Labor Relations Board.

Upon receipt of such an appeal, the board shall within a reasonable time hold a hearing having first caused 7 days notice in writing of the time and place of the hearing to be given to the aggrieved party, the labor organizations or bargaining agent and the public employer. These hearings must be conducted in the manner

provided in subsection 5, paragraph B. Within a reasonable time after the conclusion of any hearing the board shall make a written decision that must include findings of fact and either affirm or modify the ruling or determination of the executive director and specify the reasons for that action. A copy of that decision must be mailed to the labor organization or bargaining agent or its attorney or other designated representative and the public employer. Decisions of the board made pursuant to this subsection are subject to review by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in accordance with the standards specified in section 972, provided the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested.

[ 1993, c. 90, §1 (AMD) .]

**5. Prevention of prohibited acts.**

A. The board is empowered, as provided, to prevent any person, any public employer, any public employee, any public employee organization or any bargaining agent from engaging in any of the prohibited acts enumerated in section 964. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise. [1971, c. 609, §9 (NEW).]

B. Any public employer, any public employee, any public employee organization or any bargaining agent which believes that any person, any public employer, any public employee, any public employee organization or any bargaining agent has engaged in or is engaging in any such prohibited practice may file a complaint with the executive director of the board stating the charges in that regard. No such complaint shall be filed with the executive director until the complaining party shall have served a copy thereof upon the party complained of. Upon receipt of such complaint, the executive director or his designee shall review the charge to determine whether the facts as alleged may constitute a prohibited act. If it is determined that the facts do not, as a matter of law, constitute a violation, the charge shall be dismissed by the executive director, subject to review by the board. If a formal hearing is deemed necessary by the executive director or by the board, the executive director shall serve upon the parties to the complaint a notice of the prehearing conference and of the hearing before the board, that notice to designate the time and place of hearing for the prehearing conference or the hearing, as appropriate, provided that no hearing shall be held based upon any alleged prohibited practice occurring more than 6 months prior to the filing of the complaint with the executive director. The party complained of shall have the right to file a written answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed for the hearing. In the discretion of the board, any other person or organization may be allowed to intervene in the proceeding and to present testimony. Nothing in this paragraph shall restrict the right of the board to require the executive director or his designee to hold a prehearing conference on any prohibited practice complaint prior to the hearing before the board and taking whatever action, including dismissal, attempting to resolve disagreements between the parties or recommending an order to the board, as he may deem appropriate, subject to review by the board. [1975, c. 697, §4 (RPR).]

C. After hearing and argument if, upon a preponderance of the evidence received, the board shall be of the opinion that any party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall in writing state its findings of fact and the reasons for its conclusions and shall issue and cause to be served upon such party an order requiring such party to cease and desist from such prohibited practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause.

After hearing and argument if, upon a preponderance of the evidence received, the board shall not be of the opinion that the party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall in writing state its findings of fact and the reasons for its conclusions and shall issue an order dismissing said complaint. [1971, c. 609, §9 (NEW).]

D. If after the issuance of an order by the board requiring any party to cease and desist or to take any other affirmative action, said party fails to comply with the order of the board then the party in whose favor the order operates or the board may file a civil action in the Superior Court of Kennebec County, or the county in which the prohibited practice has occurred, to compel compliance with the order of the board. Upon application of any party in interest or the board, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it deems just and proper; provided that the board's decision shall not be stayed except where it is clearly shown to the satisfaction of the court that substantial and irreparable injury shall be sustained or that there is a substantial risk of danger to the public health or safety. In such action to compel compliance the Superior Court shall not review the action of the board other than to determine whether the board has acted in excess of its jurisdiction. If an action to review the decision of the board is pending at the time of the commencement of an action for enforcement pursuant to this subsection or is thereafter filed, the 2 actions shall be consolidated. [1977, c. 479, §6 (AMD).]

E. Whenever a complaint is filed with the executive director of the board, alleging that a public employer has violated section 964, subsection 1, paragraph F or alleging that a public employee or public employee organization or bargaining agent has violated section 964, subsection 2, paragraph C the party making the complaint may simultaneously seek injunctive relief from the Superior Court in the county in which the prohibited practice is alleged to have occurred pending the final adjudication of the board with respect to such matter. [1971, c. 609, §9 (NEW).]

F. Either party may seek a review by the Superior Court of Kennebec County or of the county in which the prohibited practice is alleged to have occurred of a decision or order of the Maine Labor Relations Board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall set the complaint down for hearing and shall cause all interested parties and the board to be notified. The hearing may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it determines just and proper; except that the board's decision is not stayed except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk of danger to the public health or safety. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the findings of the board on questions of fact are final unless shown to be clearly erroneous. Any appeal to the Law Court must be the same as an appeal from an interlocutory order under section 6. [2011, c. 559, Pt. A, §26 (AMD).]

G. In any judicial proceeding authorized by this subsection in which injunctive relief is sought, sections 5 and 6 shall apply, except that neither an allegation nor proof of unavoidable substantial and irreparable injury to the complainant's property shall be required to obtain a temporary restraining order or injunction. [1973, c. 788, §120-A (AMD).]

[ 2011, c. 559, Pt. A, §26 (AMD) .]

**6**. **Hearings.** The hearings conducted by the board pursuant to this section shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other evidence deemed relevant by the board may be received.

The chairman shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to the board for determination. Witnesses subpoenaed by the board shall be allowed the same fees as are paid to witnesses in the Superior Court. These fees, together with all necessary expenses of the board, shall be paid by the Treasurer of State on warrants drawn by the State Controller.

[ 1971, c. 609, §9 (NEW) .]

7. **Reports.** The board shall annually, on or before the first day of July, make a report to the Governor. The appropriation for the board and the executive director shall be included in the bureau's budget and authorization for expenditures shall be the responsibility of the director.

The board shall have the authority to recommend to the Legislature changes or additions to this chapter or to related enactments of law.

[ 1977, c. 78, §164 (AMD) .]

SECTION HISTORY
1969, c. 424, §1 (NEW). 1969, c. 578, §§5-A,6,6-A (AMD). 1971, c. 609, §9 (RPR). 1971, c. 620, §13 (AMD). 1973, c. 458, §10 (AMD). 1973, c. 533, §§1,2 (AMD). 1973, c. 610, §1 (AMD). 1973, c. 788, §§120,120-A (AMD). 1975, c. 564, §§22-28 (AMD). 1975, c. 697, §§3-7 (AMD). 1975, c. 771, §§281-283 (AMD). 1975, c. 776, §2 (AMD). 1977, c. 78, §164 (AMD). 1977, c. 479, §§6,7 (AMD). 1977, c. 553, §§2,3 (AMD). 1977, c. 674, §24 (AMD). 1979, c. 501, §2 (AMD). 1979, c. 663, §160 (AMD). 1983, c. 812, §162 (AMD). 1989, c. 503, §B109 (AMD). 1991, c. 143, §§1,2 (AMD). 1991, c. 622, §O8 (AMD). 1991, c. 798, §6 (AMD). 1993, c. 90, §§1,2 (AMD). 2011, c. 559, Pt. A, §26 (AMD).

## §969. MUNICIPAL PERSONNEL BOARD OR CIVIL SERVICE AUTHORITY

Nothing in this chapter shall diminish the authority and power of any municipal civil service commission or personnel board or its agents established by statute, charter or special act to conduct and grade merit examinations and to rate candidates in the order of their relative excellence from which appointments or promotions may be made to positions in the competitive division of the classified service of the municipal employer served by such a civil service commission or personnel board. The conduct and the grading of merit examinations, the rating of candidates and the establishment of lists from such examinations and the appointments from such lists shall not be subject to collective bargaining. If a collective bargaining agreement between a public employer and a bargaining agent contains provisions for binding arbitration of grievances involving the following matters: The demotion, lay-off, reinstatement, suspension, removal, discharge or discipline of any public employee, such provisions shall be controlling in the event they are in conflict with any authority and power, involving such matters, of any such municipal civil service commission or personnel board or its agents. [1969, c. 424, §1 (NEW).]

SECTION HISTORY
1969, c. 424, §1 (NEW).

## §970. SCOPE OF BINDING CONTRACT ARBITRATION

A collective bargaining agreement between a public employer and a bargaining agent may provide for binding arbitration as the final step of a grievance procedure but the only grievances which may be taken to such binding arbitration shall be disputes between the parties as to the meaning or application of the

specific terms of the collective bargaining agreement. An arbitrator with the power to make binding decisions pursuant to any such provision shall have no authority to add to, subtract from or modify the collective bargaining agreement. [1969, c. 424, §1 (NEW).]

SECTION HISTORY
1969, c. 424, §1 (NEW).

## §971. SUITS BY AND AGAINST UNINCORPORATED EMPLOYEE ORGANIZATIONS

In any judicial proceeding brought under this chapter or to enforce any of the rights guaranteed by this chapter, any unincorporated employee organization may sue or be sued in the name by which it is known. [1971, c. 609, §10 (RPR).]

SECTION HISTORY
1969, c. 424, §1 (NEW). 1971, c. 609, §10 (RPR).

## §972. REVIEW

Either party may seek a review by the Superior Court of a binding determination by an arbitration panel. For interest arbitrations, the review must be sought in accordance with the Maine Rules of Civil Procedure, Rule 80B. [1993, c. 90, §3 (AMD).]

The binding determination of an arbitration panel or arbitrator, in the absence of fraud, upon all questions of fact shall be final. The court may, after consideration, affirm, reverse or modify any such binding determination or decision based upon an erroneous ruling or finding of law. An appeal may be taken to the law court as in any civil action. [1971, c. 609, §11 (AMD).]

SECTION HISTORY
1969, c. 578, §7 (NEW). 1971, c. 609, §11 (AMD). 1991, c. 143, §3 (AMD). 1993, c. 90, §3 (AMD).

## §973. SEPARABILITY

If any clause, sentence, paragraph or part of this chapter for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter. [1975, c. 564, §29 (NEW).]

SECTION HISTORY
1975, c. 564, §29 (NEW).

## §974. PUBLICATION OF INITIAL PROPOSALS

Either party to negotiations may publicize the parties' written initial collective bargaining proposals. No proposal may be publicized until 10 days after both parties have made their initial proposal. [1979, c. 125, §1 (NEW).]

SECTION HISTORY
1979, c. 125, §1 (NEW).

# Chapter 9-B: STATE EMPLOYEES LABOR RELATIONS ACT

## §979. PURPOSE

It is declared to be the public policy of this State and it is the purpose of this chapter to promote the improvement of the relationship between the State and its employees and between the Legislature and its employees by providing a uniform basis for recognizing the right of state or legislative employees to join labor organizations of their own choosing and to be represented by such organizations in collective bargaining for terms and conditions of employment. [1997, c. 741, §1 (AMD); 1997, c. 741, §12 (AFF).]

SECTION HISTORY
1973, c. 774, (NEW). 1997, c. 741, §1 (AMD). 1997, c. 741, §12 (AFF).

## §979-A. DEFINITIONS

As used in this chapter the following terms shall, unless the context requires a different interpretation, have the following meanings. [1973, c. 774, (NEW).]

**1**. **Bargaining agent.** "Bargaining agent" means any lawful organization, association or individual representative of such organization or association which has as its primary purpose the representation of employees in their employment relations with employers, and which has been determined by the public employer as defined in subsection 5 or by the executive director of the board to be the choice of the majority of the unit as their representative.

[ 1973, c. 774, (NEW) .]

**2**. **Board.** "Board" means the Maine Labor Relations Board as defined in section 968, subsection 1.

[ 1975, c. 564, §30 (AMD) .]

**3**. **Cost items.** "Cost items" means the provisions of a collective bargaining agreement which requires an appropriation by the Legislature.

[ 1973, c. 774, (NEW) .]

**4**. **Executive director.** "Executive director" means the Executive Director of the Maine Labor Relations Board as defined in section 968, subsection 2.

[ 1975, c. 564, §31 (AMD) .]

**4-A**. **Legislative employee.** "Legislative employee" means any employee of the Legislature performing services within the legislative branch, except any person:

A. Who is elected by popular vote; [1997, c. 741, §2 (NEW); 1997, c. 741, §12 (AFF).]

B. Who is appointed to office pursuant to law by the Governor or the Legislature for a specific term; [1997, c. 741, §2 (NEW); 1997, c. 741, §12 (AFF).]

C. Who is employed in the office of the President of the Senate, the office of the Speaker of the House, the office of the Secretary of the Senate, the office of the Clerk of the House of Representatives or the majority or minority offices of the Senate or the House of Representatives; [1997, c. 741, §2 (NEW); 1997, c. 741, §12 (AFF).]

D. Whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship with respect to matters subject to collective bargaining, as between that person and the Legislative Council; [1997, c. 741, §2 (NEW); 1997, c. 741, §12 (AFF).]

E. Who is a temporary, on-call employee; or [1997, c. 741, §2 (NEW); 1997, c. 741, §12 (AFF).]

F. Who has been employed less than 30 days. [1997, c. 741, §2 (NEW); 1997, c. 741, §12 (AFF).]

[ 1997, c. 741, §2 (NEW); 1997, c. 741, §12 (AFF) .]

5. **Public employer.** "Public employer" means, with respect to the executive branch, all the departments, agencies and commissions of the executive branch of the State of Maine, represented by the Governor or the Governor's designee. In the furtherance of this chapter, the State is considered a single employer and employment relations, policies and practices throughout the state service must be as consistent as practicable. With respect to state employees, it is the responsibility of the executive branch to negotiate collective bargaining agreements and to administer such agreements. To coordinate the employer position in the negotiation of agreements, the Legislative Council or its designee shall maintain close liaison with the Governor or the Governor's designee representing the executive branch relative to the negotiation of cost items in any proposed agreement. The Governor is responsible for the employer functions of the executive branch under this chapter, and shall coordinate its collective bargaining activities with operating agencies on matters of agency concern. It is the responsibility of the legislative branch to act upon those portions of tentative agreements negotiated by the executive branch that require legislative action.

"Public employer" means, with respect to the legislative branch, all offices or agencies of the Legislature represented by the Legislative Council or its designee. With respect to legislative employees, the Legislative Council shall negotiate and administer collective bargaining agreements. The Legislative Council or its designee is responsible for the employer functions of the legislative branch under this chapter.

With respect to the executive branch, the Bureau of Human Resources, through the Commissioner of Administrative and Financial Services, shall act as directed by the Governor to:

A. Develop and execute employee relations' policies, objectives and strategies consistent with the overall objectives of the Governor; [1981, c. 289, §11 (NEW).]

B. Conduct negotiations with certified and recognized bargaining agents under applicable statutes; [1981, c. 289, §11 (NEW).]

C. Administer and interpret collective bargaining agreements, and coordinate and direct agency activities as necessary to promote consistent policies and practices; [1981, c. 289, §11 (NEW).]

D. Represent the State in all bargaining unit determinations, elections, prohibited practice complaints and any other proceedings growing out of employee relations and collective bargaining activities; [1981, c. 289, §11 (NEW).]

E. Coordinate the compilation of all data and information needed for the development and evaluation of employee relations' programs and in the conduct of negotiations; [1981, c. 289, §11 (NEW).]

F. Coordinate the State's resources as needed to represent the State in negotiations, mediation, fact-finding, arbitration and other proceedings; and [1997, c. 741, §3 (AMD); 1997, c. 741, §12 (AFF).]

G. Provide staff advice on employee relations to the various departments and agencies of State Government, including providing for necessary supervisory and managerial training. [1981, c. 289, §11 (NEW).]

All state departments and agencies shall provide such assistance, services and information as required by the Governor's office, or the Bureau of Human Resources, and shall take such administrative or other action as may be necessary to implement and administer the provisions of any binding agreement between the State and employee organizations entered into under law.

[ 2007, c. 240, Pt. HH, §14 (AMD) .]

**6**. **State employee.** "State employee" means any employee of the State of Maine performing services within the executive department except any person:

A. Elected by popular vote; or [1973, c. 774, (NEW).]

B. Appointed to office pursuant to statute, ordinance or resolution for a specified term by the Governor or by a department head or body having appointive power within the executive department; or [1973, c. 774, (NEW).]

C. Whose duties necessarily imply a confidential relationship with respect to matters subject to collective bargaining as between such person and the Governor, a department head, body having appointive power within the executive department or any other official or employee excepted by this section; or [1981, c. 381, §1 (AMD).]

D. Who is a department or division head appointed to office pursuant to statute, ordinance or resolution for an unspecified term by the Governor or by a body having appointive power within the executive department; or [1973, c. 774, (NEW).]

E. Who has been employed less than 6 months; or [1973, c. 774, (NEW).]

F. Who is a temporary, seasonal or on-call employee; or [1973, c. 774, (NEW).]

G. Who is serving as a member of the State Militia or National Guard; or [1981, c. 381, §1 (AMD).]

H. Who is a staff attorney, assistant attorney general or deputy attorney general in the Department of Attorney General; or [1981, c. 381, §2 (AMD).]

I. Who is appointed to a major policy-influencing position as designated by Title 5, chapter 71; or [1985, c. 785, Pt. A, §99 (AMD).]

J. Who substantially participates in the formulation and effectuation of policy in a department or agency or has a major role, other than a typically supervisory role, in the administration of a collective bargaining agreement in a department or agency; or [1997, c. 773, §2 (AMD); 1997, c. 773, §§7, 8 (AFF).]

K. Who is a prisoner employed by a public employer during the prisoner's term of imprisonment, except for prisoners who are in a work release program or supervised community confinement pursuant to Title 34-A, section 3036-A. [2013, c. 133, §22 (AMD).]

L. [1997, c. 773, §§7, 8 (AFF); 1997, c. 773, §4 (RP).]

[ 2013, c. 133, §22 (AMD) .]

SECTION HISTORY
1973, c. 774, (NEW). 1975, c. 564, §§30,31 (AMD). 1977, c. 642, (AMD). 1981, c. 289, §11 (AMD). 1981, c. 381, §§1-3 (AMD). 1985, c. 785, §§A98,99 (AMD). 1989, c. 654, §§3,4,13 (AMD). 1991, c. 780, §Y121 (AMD). 1997, c. 668, §§4-6 (AMD). 1997, c. 741, §§2,3 (AMD). 1997, c. 741, §12 (AFF). 1997, c. 773, §§2-4 (AMD). 1997, c. 773, §§7,8 (AFF). 2007, c. 240, Pt. HH, §14 (AMD). 2009, c. 142, §12 (AMD). 2013, c. 133, §22 (AMD).

## §979-B. RIGHT OF STATE EMPLOYEES OR LEGISLATIVE EMPLOYEES TO JOIN OR REFRAIN FROM JOINING LABOR ORGANIZATIONS; PROHIBITION

A person may not directly or indirectly interfere with, intimidate, restrain, coerce or discriminate against a state or legislative employee or a group of employees in the free exercise of their rights, given by this section, to voluntarily: [2007, c. 415, §6 (RPR).]

**1**. **Join a union.** Join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining or in the free exercise of any other right under this chapter; or

[ 2007, c. 415, §6 (NEW) .]

**2**. **Not join a union.** Refrain from joining or participating in the activities of organizations for the purposes of representation and collective bargaining, except that an employee may be required to pay to the organization that is the bargaining agent for the employee a service fee that represents the employee's pro rata share of those expenditures that are germane to the organization's representational activities.

[ 2007, c. 415, §6 (NEW) .]

SECTION HISTORY
1973, c. 774, (NEW). 1997, c. 741, §4 (AMD). 1997, c. 741, §12 (AFF). 2007, c. 415, §6 (RPR).

## §979-C. PROHIBITED ACTS OF THE PUBLIC EMPLOYER, STATE EMPLOYEES AND STATE EMPLOYEE ORGANIZATIONS

**1**. **Public employer prohibitions.** The public employer, its representatives and agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 979-B; [1973, c. 774, (NEW).]

B. Encouraging or discouraging membership in any employee organization by discrimination in regard to hire or tenure of employment or any term or condition of employment; [1973, c. 774, (NEW).]

C. Dominating or interfering with the formation, existence or administration of any employee organization; [1973, c. 774, (NEW).]

D. Discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter; [1973, c. 774, (NEW).]

E. Refusing to bargain collectively with the bargaining agent of its employees as required by section 979-D; [1973, c. 774, (NEW).]

F. Blacklisting of any employee organization or its members for the purpose of denying them employment; [2007, c. 415, §7 (AMD).]

G. Requiring an employee to join a union, employee association or bargaining agent as a member; and [2007, c. 415, §8 (NEW).]

H. Terminating or disciplining an employee for not paying union dues or fees of any type. [2007, c. 415, §9 (NEW).]

[ 2007, c. 415, §§7-9 (AMD) .]

**2**. **State and legislative employee prohibitions.** State and legislative employees, employee organizations, their agents, members and bargaining agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 979-B or the public employer in the selection of its representative for purposes of collective bargaining or the adjustment of grievances; [1973, c. 774, (NEW).]

B. Refusing to bargain collectively with the public employer as required by section 979-D; [1973, c. 774, (NEW).]

C. Engaging in:

(1) A work stoppage;

(2) A slowdown;

(3) A strike; or

(4) The blacklisting of the public employer for the purpose of preventing it from filling employee vacancies. [1973, c. 774, (NEW).]

[ 1997, c. 741, §5 (AMD); 1997, c. 741, §12 (AFF) .]

**3**. **Violations.** Violations of this section shall be processed by the board in the manner provided in section 979-H.

[ 1973, c. 774, (NEW) .]

SECTION HISTORY
1973, c. 774, (NEW). 1997, c. 741, §5 (AMD). 1997, c. 741, §12 (AFF).
2007, c. 415, §§7-9 (AMD).

## §979-D. OBLIGATION TO BARGAIN

**1**. **Negotiations.** On and after January 1, 1975, it shall be the obligation of the public employer and the bargaining agent to bargain collectively. "Collective bargaining" means, for the purpose of this chapter, their mutual obligation:

A. To meet at reasonable times; [1973, c. 774, (NEW).]

B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, provided the parties have not otherwise agreed in a prior written contract; [1973, c. 774, (NEW).]

C. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation but shall not exceed 3 years; [1987, c. 33, (AMD).]

D. To participate in good faith in the mediation, fact finding and arbitration procedures required by this section; and [1985, c. 289, (AMD).]

E. To confer and negotiate in good faith:

(1) To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession. All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining, except those matters which are prescribed or controlled by public law. Such matters appropriate for collective bargaining to the extent they are not prescribed or controlled by public law include but are not limited to:

(a) Wage and salary schedules to the extent they are inconsistent with rates prevailing in commerce and industry for comparable work within the State;

(b) Work schedules relating to assigned hours and days of the week;

(c) Use of vacation or sick leave, or both;

(d) General working conditions;

(e) Overtime practices;

(f) Rules for personnel administration, except the following: Rules relating to applicants for employment in state or legislative service and state classified employees in an initial probationary status, including any extensions thereof, provided such rules are not discriminatory by reason of an applicant's race, color, creed, sex or national origin;

(g) Compensation system for state and legislative employees, which is defined as:

(i) Guide charts, if any, and job evaluation factors, including factor language and factor weights, used to evaluate jobs for pay purposes;

(ii) Job point to pay grade conversion tables;

(iii) The number of and spread between pay steps within pay grades;

(iv) The number of and spread between pay grades within the system; and

(v) Temporary payment of recruitment and retention stipends, provided the stipends are allowed under Civil Service Law;

(h) The nature of and procedures governing appeals of the allocation or reallocation of job classifications to pay grades resulting from any revisions to the compensation system; and

(i) Implementation of any revisions to the compensation system.

(2) Subparagraph (1), shall not be construed to be in derogation of or contravene the spirit and intent of the merit system principles and personnel laws.

(3) Cost items shall be submitted for inclusion in the Governor's next operating budget within 10 days after the date on which the agreement is ratified by the parties. If the Legislature rejects any of the cost items submitted to it, all cost items submitted shall be returned to the parties for further bargaining. Cost items related to a collective bargaining agreement reached under this chapter and submitted to the Legislature for its approval under this subparagraph shall not be submitted in the same legislation that contains cost items for employees exempted from the definition of "state employee" under section 979-A, subsection 6, and employees of the legislative branch, except that cost items for those employees exempted under section 979-A, subsection 6, paragraphs E and F, need not be excluded.

(4) Collective bargaining over the subjects described in subparagraph (1), divisions (g), (h) and (i), is subject to the following.

(a) Subparagraph (1), division (g), shall not be construed to authorize any more than one system for evaluating jobs of state employees in bargaining units recognized under this chapter.

(b) Either the public employer or the bargaining agents may compel the other party to bargain collectively over the subjects described in subparagraph (1), divisions (g), (h) and (i), provided that bargaining over those subjects may not be compelled by either the public employer or the bargaining agents sooner than 10 years after the parties' last agreement to revise the compensation system made pursuant to a demand to bargain.

(c) During the periods of time described in division (b), when the subjects described in subparagraph (1), divisions (g), (h) and (i), are not mandatory subjects of bargaining, they shall be permissive subjects of bargaining.

(d) Bargaining over the subjects described in subparagraph (1), divisions (g), (h) and (i), shall be conducted separately and apart from bargaining with individual bargaining agents over all other negotiable subjects and shall be conducted within a committee composed of representatives of management and of the bargaining units recognized under this chapter.

(e) The labor representatives on the committee shall consist of equal numbers of representatives from each of the bargaining units recognized under this chapter. Each bargaining unit shall have one vote, regardless of the number of representatives, on any matter addressed by the committee. The labor position on any matter addressed by the committee shall be established by majority vote of the units recognized under this chapter. A majority vote of the units is necessary to initiate bargaining over the matters described in subparagraph (1), divisions (g), (h) and (i).

(f) Notwithstanding the time frame provided in subparagraph (3), cost items resulting from revisions to the compensation system may only be submitted to the Legislature for funding after all appeals from the allocation or reallocation of job classifications under the revised system have been finally decided. The cost items relating to an individual bargaining unit shall be submitted to the Legislature for funding as part of the next legislation submitted pursuant to subparagraph (3) to fund a collective bargaining agreement between the State and that bargaining unit.

(g) Bargaining over the subjects described in subparagraph (1), divisions (g), (h) and (i), shall be subject to the dispute resolution procedures of subsections 2, 3 and 4. For purposes of subsection 4, paragraph D, controversies over the subjects described in subparagraph (1), divisions (g), (h) and (i), shall be deemed "controversies over salaries."

(5) Nothing in this chapter may be construed to exclude from the scope of collective bargaining the subjects described in subparagraph (1), divisions (g), (h) and (i). [1997, c. 741, §6 (AMD); 1997, c. 741, §12 (AFF).]

[ 1997, c. 741, §6 (AMD); 1997, c. 741, §12 (AFF) .]

**2. Mediation.**

A. It is the declared policy of the State to provide full and adequate facilities for the settlement of disputes between the employer and employees or their representatives and other disputes subject to settlement through mediation. [1975, c. 564, §32 (AMD).]

B. Mediation procedures as provided by section 965, subsection 2, shall be followed whenever either party to a controversy requests such services prior to arbitration, or at any time on motion of the Maine Labor Relations Board or its executive director. [1975, c. 564, §32 (AMD).]

C. The employer, union or employees involved in collective bargaining shall notify the Executive Director of the Maine Labor Relations Board, in writing, at least 30 days prior to the expiration of a contract, or 30 days prior to entering into negotiations for a first contract between the employer and the employees, or whenever a dispute arises between the parties threatening interruption of work, or under both conditions. [1975, c. 564, §32 (AMD).]

D. Any information disclosed by either party to a dispute to the panel or any of its members in the performance of this subsection shall be privileged. [1973, c. 774, (NEW).]

[ 1975, c. 564, §32 (AMD) .]

**3. Fact-finding.**

A. If the parties, either with or without the services of a mediator, are unable to effect a settlement of their controversy, they may jointly agree either to call upon the Maine Labor Relations Board for fact-finding services with recommendations or to pursue some other mutually acceptable fact-finding

procedure, including use of the Federal Mediation and Conciliation Service or the American Arbitration Association according to their respective procedures, rules and regulations. [1975, c. 564, §33 (AMD).]

B. If the parties do not jointly agree to call upon the Maine Labor Relations Board or to pursue some other procedure, either party to the controversy may request the executive director to assign a fact-finding panel. If so requested, the executive director shall appoint a fact-finding panel, ordinarily of 3 members, in accordance with rules and procedures prescribed by the board for making such appointments. [1975, c. 564, §34 (AMD).]

C. The fact-finding proceedings shall be as provided by section 965, subsection 3. [1973, c. 774, (NEW).]

[ 1975, c. 564, §§33, 34 (AMD) .]

**4**. **Arbitration.**

A. In addition to the 30-day period referred to in section 965, subsection 3, the parties shall have 15 more days, making a total of 45 days from the submission of findings and recommendations, in which to make a good faith effort to resolve their controversy. [1973, c. 774, (NEW).]

B. If the parties have not resolved their controversy by the end of said 45-day period, either party may petition the board to initiate compulsory final and binding arbitration of the negotiations impasse. On receipt of the petition, the executive director of the board shall investigate to determine if an impasse has been reached. If he so determines, he shall issue an order requiring arbitration and requesting the parties to select one or more arbitrators. If the parties within 10 days after the issuance of the order have not selected an arbitrator or a Board of Arbitration, the board shall then order each party to select one arbitrator, and if these 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the board shall submit a list from which the parties may alternately strike names until a single name is left, who shall be appointed by the board as arbitrator. [1973, c. 774, (NEW).]

C. In reaching a decision under this paragraph, the arbitrator shall consider the following factors:

(1) The interests and welfare of the public and the financial ability of the State Government to finance the cost items proposed by each party to the impasse;

(2) Comparison of the wages, hours and working conditions of the employees involved in the arbitration proceeding with the wages, hours and working conditions of other employees performing similar services in public and private employment in other jurisdictions competing in the same labor market;

(3) The over-all compensation presently received by the employees including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;

(4) Such other factors not confined to the foregoing, which are normally and traditionally taken into consideration in the determination of wages, hours and working conditions through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment, including the average consumer price index;

(5) The need of State Government and the Legislature for qualified employees;

(6) Conditions of employment in similar occupations outside State Government or the legislative branch;

(7) The need to maintain appropriate relationships between different occupations in State Government or in the legislative branch; and

(8) The need to establish fair and reasonable conditions in relation to job qualifications and responsibilities. [1997, c. 741, §7 (AMD); 1997, c. 741, §12 (AFF).]

D. With respect to controversies over salaries, pensions and insurance, the arbitrator will recommend terms of settlement and may make findings of fact. Such recommendations and findings shall be advisory and shall not be binding upon the parties. The determination by the arbitrator on all other issues shall be final and binding on the parties. [1973, c. 774, (NEW).]

E. The arbitrator shall have a period of 30 days from the termination of the hearing in which to submit his report to the parties and to the board, unless the aforesaid time limitation shall be extended by the executive director. [1973, c. 774, (NEW).]

[ 1997, c. 741, §7 (AMD); 1997, c. 741, §12 (AFF) .]

**5. Costs.** The costs for the services of the mediator, the members of the fact-finding board and of the neutral arbitrator or arbitrators including, if any, per diem expenses, and actual and necessary travel and subsistence expenses and the costs of hiring the premises where any mediation, fact-finding or arbitration proceedings are conducted, must be shared equally by the parties to the proceedings. All other costs must be assumed by the party incurring them.

[ 1991, c. 622, Pt. O, §9 (AMD) .]

SECTION HISTORY
1973, c. 774, (NEW). 1975, c. 564, §§32-34 (AMD). 1979, c. 501, §3 (AMD). 1985, c. 289, (AMD). 1985, c. 785, §B117 (AMD). 1987, c. 33, (AMD). 1989, c. 596, §N4 (AMD). 1991, c. 622, §O9 (AMD). 1997, c. 741, §§6,7 (AMD). 1997, c. 741, §12 (AFF).

## §979-E. BARGAINING UNIT; HOW DETERMINED

**1.** In the event of a dispute between the public employer and an employee or employees as to the appropriateness of a unit for purposes of collective bargaining or between the public employer and an employee or employees as to whether a supervisory or other position is included in the bargaining unit, the executive director or his designee shall make the determination, except that anyone excepted from the definition of state employee under section 979-A may not be included in a bargaining unit. The executive director or his designee conducting unit determination proceedings shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them. In determining whether a supervisory position should be excluded from the proposed bargaining unit, the executive director or his designee shall consider, among other criteria, if the principal functions of the position are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing a collective bargaining agreement or establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards.

[ 1975, c. 697, §8 (AMD) .]

**2.** In order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter, to insure a clear and identifiable community of interest among employees concerned, and to avoid excessive fragmentation among bargaining units in State Government, the executive director of the board or his designee shall decide in each case the unit appropriate for purposes of collective bargaining.

[ 1975, c. 612, §1 (AMD) .]

**3**. **Unit clarification.** Where there is a certified or currently recognized bargaining representative and where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit, any public employer or any recognized or certified bargaining agent may file a petition for a unit clarification, provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation.

[ 1975, c. 697, §9 (NEW) .]

SECTION HISTORY
1973, c. 774, (NEW). 1975, c. 612, §1 (AMD). 1975, c. 697, §§8,9 (AMD).

## §979-F. DETERMINATION OF BARGAINING AGENT

**1**. **Voluntary recognition.** Any state employee organization may file a request with the public employer alleging that a majority of the state employees in an appropriate bargaining unit wish to be represented for the purpose of collective bargaining between the public employer and the employees' organization. Such request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include a demonstration of majority support. Such request for recognition shall be granted by the public employer unless the public employer desires that an election determine whether the organization represents a majority of the members in the bargaining unit.

[ 1973, c. 774, (NEW) .]

**2**. **Elections.**

A. The executive director of the board or his designee upon signed request of a public employer alleging that one or more state employees or state employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of state employees, or upon signed petition of at least 30% of a bargaining unit of state employees that they desire to be represented by an organization, shall conduct a secret ballot election to determine whether the organization represents a majority of the members of the bargaining unit. Such an election may be conducted at suitable work locations or through the United States mail provided, nevertheless, that the procedures adopted and employed by the Maine Labor Relations Board shall maintain the anonymity of the voter from both the employee organizations and the management representatives involved. [1975, c. 612, §2 (AMD).]

B. The ballot shall contain the name of such organization and that of any other organization showing written proof of at least 10% representation of the state employees within the unit, together with a choice for any state employee to designate that he does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and no one of the 3 or more choices receives a majority vote of the state employees voting, a run-off election shall be held. The run-off ballot shall contain the 2 choices which received the largest and 2nd largest number of votes. When an organization receives the majority of votes of those voting, the executive director of the board shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit shall be recognized by the public employer as the sole and exclusive bargaining agent for all of the employees in the bargaining unit unless and until a decertification election by secret ballot shall be held and the bargaining agent declared by the executive director of the board as not representing a majority of the unit. [1973, c. 774, (NEW).]

C. Whenever 30% of the employees in a certified bargaining unit petition for a bargaining agent to be decertified, the procedures for conducting an election on the question shall be the same as for representation as bargaining agent hereinbefore set forth. [1973, c. 774, (NEW).]

D. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question concerning unit or representation may be raised except during the period not more than 90 nor less than 60 days

prior to the expiration date of the agreement. Unit clarification proceedings are not subject to this time limitation and may be brought at any time consistent with section 979-E, subsection 3. [1981, c. 277, (AMD).]

E. The bargaining agent certified by the executive director of the board or his designee as the exclusive bargaining agent shall be required to represent all the public employees within the unit without regard to membership in the organization certified as bargaining agent, provided that any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect and if the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of such grievance. [1973, c. 774, (NEW).]

[ 1981, c. 277, (AMD) .]

SECTION HISTORY
1973, c. 774, (NEW). 1975, c. 564, §38 (AMD). 1975, c. 612, §§2,3 (AMD). 1981, c. 277, (AMD).

## §979-G. RULE-MAKING PROCEDURE AND REVIEW OF PROCEEDINGS

**1**. **Rule-making procedure.** Proceedings conducted under this chapter are subject to the rules and procedures of the board promulgated under section 968, subsection 3.

[ 1993, c. 90, §4 (AMD) .]

**2**. **Review of representation proceedings.** Any person aggrieved by any ruling or determination of the executive director under sections 979-E and 979-F may appeal, within 15 days of the announcement of the ruling or determination, except that in the instance of objections to the conduct of an election or challenged ballots the time period is 5 working days, to the Maine Labor Relations Board. Upon receipt of such an appeal, the board shall, within a reasonable time, hold a hearing, having first caused 7 days' notice in writing of the time and place of such hearing to be given to the aggrieved party, the labor organizations or bargaining agent and the public employer. The hearings and the procedures established in furtherance thereof must be in accordance with section 968. Decisions of the board made pursuant to this subsection are subject to review by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in accordance with the standards specified in section 972, if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested.

[ 1993, c. 90, §4 (AMD) .]

SECTION HISTORY
1973, c. 774, (NEW). 1975, c. 564, §35 (AMD). 1975, c. 697, §10 (AMD). 1991, c. 143, §4 (AMD). 1993, c. 90, §4 (AMD).

## §979-H. PREVENTION OF PROHIBITED ACTS

**1**. The board is empowered, as provided, to prevent any person, the public employer, any state employee, any legislative employee, any employee organization or any bargaining agent from engaging in any of the prohibited acts enumerated in section 979-C. This power may not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise.

[ 1997, c. 741, §8 (AMD); 1997, c. 741, §12 (AFF) .]

**2**. The public employer, any state employee, any legislative employee, any employee organization or any bargaining agent that believes that any person, the public employer, any state employee, any legislative employee, any employee organization or any bargaining agent has engaged in or is engaging in any such prohibited practice may file a complaint with the executive director of the board stating the charges in that regard. A complaint may not be filed with the executive director until the complaining party has served a copy thereof upon the party complained of. Upon receipt of such complaint, the executive director or the executive director's designee shall review the charge to determine whether the facts as alleged may constitute a prohibited act. If it is determined that the facts do not, as a matter of law, constitute a violation, the charge must be dismissed by the executive director, subject to review by the board. If a formal hearing is considered necessary by the executive director or by the board, the executive director shall serve upon the parties to the complaint a notice of the prehearing conference and of the hearing before the board. The notice must designate the time and place of hearing for the prehearing conference or the hearing, as appropriate, provided that no hearing may be held based upon any alleged prohibited practice occurring more than 6 months prior to the filing of the complaint with the executive director. The party complained of may file a written answer to the complaint and may appear in person or otherwise and give testimony at the place and time fixed for the hearing. In the discretion of the board, any other person or organization may be allowed to intervene in that proceeding and to present testimony. This subsection does not restrict the right of the board to require the executive director or the executive director's designee to hold a prehearing conference on any prohibited practice complaint prior to the hearing before the board and taking whatever action, including dismissal, attempting to resolve disagreements between the parties or recommending an order to the board, as the executive director or the executive director's designee considers appropriate, subject to review by the board.

[ 1997, c. 741, §9 (AMD);  1997, c. 741, §12 (AFF) .]

**3**. After hearing and argument, if, upon a preponderance of the evidence received, the board shall be of the opinion that any party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall in writing state its findings of fact and the reasons for its conclusions and shall issue and cause to be served upon such party an order requiring such party to cease and desist from such prohibited practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause.

[ 1975, c. 623, §39 (AMD) .]

**4**. After hearing and argument, if, upon a preponderance of the evidence received, the board shall not be of the opinion that the party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall in writing state its findings of fact and the reasons for its conclusions and shall issue an order dismissing said complaint.

[ 1973, c. 774, (NEW) .]

**5**. If after the issuance of an order by the board requiring any party to cease and desist or to take any other affirmative action, said party fails to comply with the order of the board, then the party in whose favor the order operates or the board may file a civil action in the Superior Court in Kennebec County, to compel compliance with the order of the board. In such action to compel compliance, the Superior Court shall not review the action of the board other than to determine questions of law. If an action to review the decision of the board is pending at the time of the commencement of an action for enforcement pursuant to this subsection or is thereafter filed, the 2 actions shall be consolidated.

[ 1975, c. 612, §4 (AMD) .]

**6**. Whenever a complaint is filed with the executive director of the board, alleging that the public employer has violated section 979-C, subsection 1, paragraph F or alleging that a state employee, a legislative employee or employee organization or bargaining agent has violated section 979-C, subsection 2, paragraph C, the party making the complaint may simultaneously seek injunctive relief from the Superior Court in the county in which the prohibited practice is alleged to have occurred pending the final adjudication of the board with respect to such matter.

[ 1997, c. 741, §10 (AMD); 1997, c. 741, §12 (AFF) .]

**7**. **Court review.** Either party may seek a review by the Superior Court in Kennebec County of a decision or order of the Maine Labor Relations Board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall set the complaint down for hearing and shall cause all interested parties and the board to be notified. The hearing may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it determines just and proper; except that the board's decision or order is not stayed except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk of danger to the public health or safety. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the finding of the board on questions of fact is final unless shown to be clearly erroneous. Any appeal to the Law Court must be the same as an appeal from an interlocutory order under section 6.

[ 2011, c. 559, Pt. A, §27 (AMD) .]

**8**. In any judicial proceeding authorized by this subsection in which injunctive relief is sought, sections 5 and 6 shall apply, except that neither an allegation nor proof of unavoidable substantial and irreparable injury to the complainant's property shall be required to obtain a temporary restraining order or injunction.

[ 1973, c. 774, (NEW) .]

SECTION HISTORY
1973, c. 774, (NEW). 1975, c. 564, §36 (AMD). 1975, c. 612, §4 (AMD). 1975, c. 623, §39 (AMD). 1975, c. 697, §§11,12 (AMD). 1991, c. 143, §5 (AMD). 1993, c. 90, §5 (AMD). 1997, c. 741, §§8-10 (AMD). 1997, c. 741, §12 (AFF). 2011, c. 559, Pt. A, §27 (AMD).

## §979-I. HEARINGS

**1**. Hearings conducted by the board shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other evidence deemed relevant by the board may be received.

[ 1973, c. 774, (NEW) .]

**2**. The chairman shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to the board for determination. Witnesses subpoenaed by the board shall be allowed the same fees as are paid to witnesses in the Superior Court. These fees, together with all necessary expenses of the board, shall be paid by the Treasurer of State on warrants drawn by the State Controller.

[ 1973, c. 774, (NEW) .]

SECTION HISTORY
1973, c. 774, (NEW).

## §979-J. REPORTS

**1**. The board shall annually, on or before the first day of July, make a report to the Governor. The appropriation for the board and the executive director shall be included in the budget of the Department of Labor and authorization for expenditures shall be the responsibility of the chairman or executive director. The board shall prepare a biennial budget for submission to the Legislature for appropriations sufficient to carry out its duties. Authorization for expenditures shall be the responsibility of the board. All expenses of the board and its staff, including all necessary travelling and subsistence expenses, shall be paid on presentation of itemized vouchers therefor approved by the board or the executive director.

[ 1981, c. 168, §8 (AMD) .]

**2**. The board shall have the authority to recommend to the Legislature changes or additions to this chapter or to related enactments of law.

[ 1973, c. 774, (NEW) .]

SECTION HISTORY
1973, c. 774, (NEW). 1975, c. 564, §37 (AMD). 1975, c. 612, §5 (AMD). 1975, c. 771, §284 (AMD). 1981, c. 168, §8 (AMD).

## §979-K. GRIEVANCE ARBITRATION

An agreement between a bargaining agent and the public employer may provide for binding arbitration as the final step of a grievance procedure, provided that any such grievance procedure shall be exclusive and shall supersede any otherwise applicable grievance procedure provided by law. If no such provision is contained in the collective bargaining agreement, the parties shall submit their differences for resolution by the State Civil Service Appeals Board. [1985, c. 785, Pt. B, §118 (AMD).]

SECTION HISTORY
1973, c. 774, (NEW). 1981, c. 289, §12 (AMD). 1985, c. 785, §B118 (AMD).

## §979-L. SUITS BY AND AGAINST UNINCORPORATED EMPLOYEE ORGANIZATIONS

In any judicial proceeding brought under this chapter or to enforce any of the rights guaranteed by this chapter, any unincorporated employee organization may sue or be sued in the name by which it is known. [1973, c. 774, (NEW).]

SECTION HISTORY
1973, c. 774, (NEW).

## §979-M. REVIEW OF ARBITRATION AWARDS

**1**. Either party may seek a review by the Superior Court of a binding determination by an arbitration panel. Such review shall be sought in accordance with Rule 80B of the Maine Rules of Civil Procedure.

[ 1973, c. 774, (NEW) .]

**2**. In the absence of fraud, the binding determination of an arbitration panel or arbitrator shall be final upon all questions of fact.

[ 1973, c. 774, (NEW) .]

**3**. The court may, after consideration, affirm, reverse or modify any such binding determination or decision based upon an erroneous ruling or finding of law. An appeal may be taken to the law court as in any civil action.

[ 1973, c. 774, (NEW) .]

SECTION HISTORY
1973, c. 774, (NEW).

## §979-N. SEPARABILITY

**1**. If any clause, sentence, paragraph or part of this chapter, or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter and the application of such provision to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof, directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this chapter would have been adopted had such invalid provisions not been included.

[ 1973, c. 774, (NEW) .]

**2**. Nothing in this chapter or any contract negotiated pursuant to this chapter shall in any way be interpreted or allowed to restrict or impair the eligibility of the State of Maine or any of its agencies in obtaining the benefits under any federal grant in aid or assistance programs.

[ 1973, c. 774, (NEW) .]

SECTION HISTORY
1973, c. 774, (NEW).

## §979-O. NAME

The name of the Public Employees Labor Relations Board is changed to the Maine Labor Relations Board. Whenever the name Public Employees Labor Relations Board appears in law, it shall be construed to mean Maine Labor Relations Board. [1975, c. 564, §38 (NEW).]

SECTION HISTORY
1975, c. 564, §38 (NEW).

## §979-P. PUBLICATION OF INITIAL PROPOSALS

Either party to negotiations may publicize the parties' written initial collective bargaining proposals. No proposal may be publicized until 10 days after both parties have made their initial proposal. [1979, c. 125, §2 (NEW).]

SECTION HISTORY
1979, c. 125, §2 (NEW).

## §979-Q. SEPARATION OF ROLES

***(REPEALED)***

SECTION HISTORY
1985, c. 785, §B119 (NEW). 1987, c. 673, §2 (AMD). 2007, c. 240, Pt. HH, §15 (RP).

## §979-R. CONTINUATION OF GRIEVANCE ARBITRATION PROVISIONS

**1**. **Contract signed before October 1, 2005.** If a contract between a public employer and a bargaining agent signed prior to October 1, 2005 expires prior to the parties' agreement on a new contract, the grievance arbitration provisions of the expired contract pertaining to disciplinary action remain in effect until the parties execute a new contract.

[ 2005, c. 324, §2 (NEW) .]

**2**. **Contract signed after October 1, 2005.** If a contract between a public employer and a bargaining agent signed after October 1, 2005 expires prior to the parties' agreement on a new contract, the grievance arbitration provisions of the expired contract remain in effect until the parties execute a new contract. In any arbitration that is conducted pursuant to this subsection, an arbitrator shall apply only those provisions enforceable by virtue of the static status quo doctrine and may not add to, restrict or modify the applicable static status quo following the expiration of the contract unless the parties have otherwise agreed in the collective bargaining agreement. All such grievances that are appealed to arbitration are subject exclusively to the grievance and arbitration process contained in the expired agreement, and the board does not have jurisdiction over such grievances. The arbitrator's determination is subject to appeal, pursuant to the Uniform Arbitration Act. Disputes over which provisions in an expired contract are enforceable by virtue of the static status quo doctrine first must be resolved by the board, subject to appeal pursuant to applicable law. The grievance arbitration is stayed pending resolution of this issue by the board. The board may adopt rules as necessary to establish a procedure to implement the intent of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Nothing in this subsection expands, limits or modifies the scope of any grievance arbitration provisions, including procedural requirements.

[ 2005, c. 324, §2 (NEW) .]

SECTION HISTORY
1997, c. 773, §5 (NEW). 1997, c. 773, §7 (AFF). 2005, c. 324, §2 (RPR).

## §979-S. REPRESENTATION OF EMPLOYEES IN CERTAIN LIMITED-PERIOD POSITIONS

This section governs limited-period positions created for former regular employees of the State who are receiving workers' compensation payments from the State when creation of the positions will enable those employees to return to productive employment with the State. A person placed in such a limited-period position retains the employment and bargaining unit status that person had attained under this chapter prior

to the injury that resulted in workers' compensation payments. The scope of representation by the bargaining agent is limited to terms and conditions of employment unrelated to work capacity, the rehabilitation effort or any other matter prescribed or controlled by workers' compensation law unless such terms are specifically negotiated as authorized by Title 39-A, section 110. This section may not be construed to authorize the creation of limited-period positions or to limit the employee's right to designate the employee's collective bargaining agent as that employee's representative concerning matters arising under workers' compensation laws. [2001, c. 427, §1 (NEW); 2001, c. 427, §2 (AFF).]

SECTION HISTORY
2001, c. 427, §1 (NEW). 2001, c. 427, §2 (AFF).

# Chapter 10: FIRE FIGHTER ARBITATION LAW

## §980. SHORT TITLE

***(REPEALED)***

SECTION HISTORY
1965, c. 396, (NEW). 1969, c. 424, §2 (RP).

## §981. POLICY

***(REPEALED)***

SECTION HISTORY
1965, c. 396, (NEW). 1969, c. 424, §2 (RP).

## §982. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
1965, c. 396, (NEW). 1969, c. 424, §2 (RP).

## §983. RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY

***(REPEALED)***

SECTION HISTORY
1965, c. 396, (NEW). 1969, c. 424, §2 (RP).

## §984. RECOGNITION OF BARGAINING AGENT

***(REPEALED)***

SECTION HISTORY
1965, c. 396, (NEW). 1969, c. 424, §2 (RP).

## §985. OBLIGATION TO BARGAIN

***(REPEALED)***

SECTION HISTORY
1965, c. 396, (NEW). 1969, c. 424, §2 (RP).

## §986. UNRESOLVED ISSUES SUBMITTED TO ARBITRATION

***(REPEALED)***

SECTION HISTORY
1965, c. 396, (NEW). 1969, c. 424, §2 (RP).

## §987. ARBITRATION BOARD; COMPOSITION

***(REPEALED)***

SECTION HISTORY
1965, c. 396, (NEW). 1969, c. 424, §2 (RP).

## §988. HEARINGS

***(REPEALED)***

SECTION HISTORY
1965, c. 396, (NEW). 1969, c. 424, §2 (RP).

## §989. FACTORS TO BE CONSIDERED BY ARBITRATION BOARD

***(REPEALED)***

SECTION HISTORY
1965, c. 396, (NEW). 1969, c. 424, §2 (RP).

## §990. FEES AND EXPENSES OF ARBITRATION

***(REPEALED)***

SECTION HISTORY
1965, c. 396, (NEW). 1969, c. 424, §2 (RP).

## §991. COLLECTIVE BARGAINING CONTRACT; WHAT CONSTITUTES

***(REPEALED)***

SECTION HISTORY
1965, c. 396, (NEW). 1969, c. 424, §2 (RP).

## §992. REQUEST FOR COLLECTIVE BARGAINING

***(REPEALED)***

SECTION HISTORY
1965, c. 396, (NEW). 1969, c. 424, §2 (RP).

# Chapter 11: REGISTERED APPRENTICESHIP

## Subchapter 1: GENERAL PROVISIONS

### §1001. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
1965, c. 43, §1 (AMD). 1979, c. 8, §1 (AMD). 1979, c. 541, §A171 (AMD). 1989, c. 483, §A43 (AMD). 1997, c. 410, §9 (RP). 1997, c. 522, §2 (AMD). 1997, c. 683, §D3 (RP).

### §1002. STATE APPRENTICESHIP AND TRAINING COUNCIL

***(REPEALED)***

SECTION HISTORY
1969, c. 106, (AMD). 1971, c. 620, §13 (AMD). 1973, c. 571, §61 (AMD). 1975, c. 59, §3 (AMD). 1977, c. 694, §466 (AMD). 1979, c. 8, §2 (AMD). 1979, c. 242, (AMD). 1981, c. 168, §9 (AMD). 1983, c. 812, §163 (AMD). 1985, c. 821, §§16,17 (AMD). 1989, c. 483, §A44 (AMD). 1989, c. 503, §B110 (AMD). 1989, c. 700, §A104 (AMD). 1989, c. 878, §A70 (AMD). 1991, c. 528, §§K3,4 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§K3,4 (AMD). 1991, c. 716, §2 (AMD). 1993, c. 360, §C5 (AMD). 1993, c. 630, §§B7-10 (AMD). 1997, c. 410, §9 (RP). 1997, c. 522, §3 (AMD). 1997, c. 530, §A32 (AMD). 1997, c. 683, §D3 (RP).

### §1003. APPRENTICESHIP AGREEMENTS

***(REPEALED)***

SECTION HISTORY
1997, c. 410, §9 (RP). 1997, c. 522, §4 (RP).

### §1004. APPRENTICESHIP AGREEMENT STANDARDS

***(REPEALED)***
***(REPEALED)***

SECTION HISTORY
1965, c. 43, §2 (AMD). 1971, c. 610, §21 (AMD). 1979, c. 8, §§3,4 (AMD). 1989, c. 483, §A45 (AMD). 1997, c. 410, §9 (RP). 1997, c. 522, §5 (AMD). 1997, c. 683, §D3 (RP).

### §1005. RELATED AND SUPPLEMENTAL INSTRUCTION

***(REPEALED)***

SECTION HISTORY
1973, c. 571, §62 (AMD). 1985, c. 695, §12 (AMD). 1989, c. 443, §59 (AMD). 1997, c. 410, §9 (RP). 1997, c. 522, §6 (RP).

### §1005-A. PREAPPRENTICESHIP TRAINING

***(REPEALED)***

SECTION HISTORY
1989, c. 483, §A46 (NEW). 1989, c. 700, §A105 (AMD). 1997, c. 410, §9 (RP). 1997, c. 522, §7 (RP).

## §1006. LOCAL, REGIONAL AND STATE JOINT APPRENTICESHIP COMMITTEES

***(REPEALED)***

SECTION HISTORY
1989, c. 483, §A47 (AMD). 1997, c. 410, §9 (RP). 1997, c. 522, §8 (AMD). 1997, c. 683, §D3 (RP).

## §1007. VOLUNTARY ACCEPTANCE OF PROVISIONS

***(REPEALED)***

SECTION HISTORY
1997, c. 410, §9 (RP). 1997, c. 522, §9 (AMD). 1997, c. 683, §D3 (RP).

## §1008. STAFF RESOURCES

***(REPEALED)***

SECTION HISTORY
1997, c. 522, §10 (NEW). 1997, c. 683, §D3 (RP).

## §1009. COUNCIL RELATIONSHIPS

***(REPEALED)***

SECTION HISTORY
1997, c. 522, §10 (NEW). 1997, c. 683, §D3 (RP).

## §1009-A. OUTREACH AND EXPANSION

***(REPEALED)***

SECTION HISTORY
1997, c. 522, §10 (NEW). 1997, c. 683, §D3 (RP).

## §1009-B. TECHNICAL ASSISTANCE FOR SPONSORS

***(REPEALED)***

SECTION HISTORY
1997, c. 522, §10 (NEW). 1997, c. 683, §D3 (RP).

## §1009-C. COUNCIL CONFORMITY WITH FEDERAL REGULATIONS

***(REPEALED)***

SECTION HISTORY
1997, c. 522, §10 (NEW). 1997, c. 683, §D3 (RP).

## Subchapter 2: APPRENTICESHIP PROGRAMS FOR RECIPIENTS OF AID TO FAMILIES WITH DEPENDENT CHILDREN

### §1010. ESTABLISHMENT

***(REPEALED)***

SECTION HISTORY
1981, c. 512, §18 (NEW). 1989, c. 483, §A48 (RP).

### §1011. AFFIRMATIVE ACTION

***(REPEALED)***

SECTION HISTORY
1981, c. 512, §18 (NEW). 1989, c. 483, §A48 (RP).

### §1012. COORDINATION

***(REPEALED)***

SECTION HISTORY
1981, c. 512, §18 (NEW). 1983, c. 260, §2 (RPR). 1989, c. 483, §A48 (RP).

# Chapter 12: UNIVERSITY OF MAINE SYSTEM LABOR RELATIONS ACT

## §1021. PURPOSE

It is declared to be the public policy of this State and it is the purpose of this chapter to promote the improvement of the relationship between public employers and their employees by providing a uniform basis for recognizing the right of the University of Maine System employees, Maine Maritime Academy employees and community college employees to join labor organizations of their own choosing and to be represented by such organizations in collective bargaining for terms and conditions of employment. [1989, c. 443, §60 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

SECTION HISTORY
1975, c. 603, §1 (NEW). 1975, c. 671, §1 (AMD). 1977, c. 581, §1 (AMD). 1985, c. 497, §6 (AMD). 1985, c. 506, §B20 (AMD). 1985, c. 779, §71 (AMD). 1989, c. 443, §60 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF).

## §1022. DEFINITIONS

As used in this chapter, the following terms shall, unless the context requires a different interpretation, have the following meanings. [1975, c. 603, §1 (NEW).]

**1**. **Bargaining agent.**

[ 1975, c. 671, §2 (RP) .]

**1-A**. **Academy.** "Academy" means the Maine Maritime Academy and its activities and functions supervised by its board of trustees or their designee. In the furtherance of this chapter, the academy shall be considered as a single employer and employment relations, policies and practices throughout the academy shall be as consistent as practicable. It is the responsibility of the board of trustees of the academy or their designee to negotiate collective bargaining agreements and to administer such agreements. The board of trustees of the academy or their designee is responsible for the employer functions of the academy under this chapter and shall coordinate its collective bargaining activities. For purposes of consistency elsewhere in this chapter, references to the university shall be construed to include and to apply to the Maine Maritime Academy, its board of trustees, and its employees.

[ 1975, c. 671, §3 (NEW) .]

**1-B**. **Bargaining agent.** "Bargaining agent" means any lawful organization, association or individual representative of such organization or association, which has as one of its primary purposes the representation of employees in their employment relations with employers and which has been certified by the Executive Director of the Maine Labor Relations Board.

[ 1975, c. 671, §3 (NEW) .]

**1-C**. **Community college.** "Community college" means the Maine state community colleges and their activities and functions supervised by the Board of Trustees of the Maine Community College System or its designee. The employment relations, policies and practices throughout the community colleges shall be as consistent as possible. It is the responsibility of the board of trustees or its designee to negotiate collective bargaining agreements and administer these agreements. The board of trustees or its designee is responsible for employer functions of the community colleges under this chapter and shall coordinate its

collective bargaining activities with campuses or units on matters of community college concern. In addition to its responsibilities to the public generally, the board of trustees shall have the specific responsibility of considering and representing the interests and welfare of the students in any negotiations under this chapter.

A. [1987, c. 816, Pt. R, (RP).]

[ 1989, c. 443, §61 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

**2**. **Board.** "Board" means the Maine Labor Relations Board as defined in section 968, subsection 1.

[ 1975, c. 671, §4 (AMD) .]

**3**. **Board of Trustees.** "Board of Trustees" means the Board of Trustees of the University of Maine System, the Board of Trustees of the Maine Maritime Academy or the Board of Trustees of the Maine Community College System.

[ 1989, c. 443, §62 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

**4**. **Classified employee.** "Classified employee" means any employee not engaged in professional work as defined in subsection 7.

[ 1975, c. 603, §1 (NEW) .]

**5**. **Cost items.** "Cost items" means the provisions of a collective bargaining agreement which require specific funding.

[ 1975, c. 603, §1 (NEW) .]

**6**. **Executive Director.** "Executive Director" means the Executive Director of the Maine Labor Relations Board as defined in section 968, subsection 2.

[ 1975, c. 671, §5 (AMD) .]

**7**. **Professional employee.** "Professional employee" means any employee engaged in work:

A. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; [1975, c. 603, §1 (NEW).]

B. Involving the consistent exercise of discretion and judgment in its performance; [1975, c. 603, §1 (NEW).]

C. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; and [1975, c. 603, §1 (NEW).]

D. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes. [1975, c. 603, §1 (NEW).]

[ 1975, c. 603, §1 (NEW) .]

**8**. **Regular employee.** "Regular employee" means any professional or classified employee who occupies a position that exists on a continual basis.

[ 1975, c. 603, §1 (NEW) .]

**9**. **Supervisory employee.** "Supervisory employee" means any employee whose principal work tasks are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, in applying other established personnel policies and procedures and in enforcing a collective bargaining agreement or establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards.

[ 2009, c. 2, §75 (COR) .]

**10**. **University.** "University" means all campuses or units of the university, represented by the board of trustees or its designee. In the furtherance of this chapter, the university shall be considered as a single employer and employment relations, policies and practices throughout the university shall be as consistent as practicable. It is the responsibility of the board of trustees or its designee to negotiate collective bargaining agreements and to administer such agreements. The board of trustees or its designee is responsible for the employer functions of the university under this chapter and shall coordinate its collective bargaining activities with campuses or units on matters of university concern. In addition to its responsibilities to the public generally, the university shall have the specific responsibility of considering and representing the interests and welfare of the students in any negotiations under this chapter.

[ 1975, c. 721, §1 (AMD) .]

**11**. **University, academy or community college employee.** "University, academy or community college employee" means any regular employee of the University of Maine System, the Maine Maritime Academy or the Maine Community College System performing services within a campus or unit, except any person:

A. Appointed to office pursuant to law; [1987, c. 402, Pt. A, §156 (RPR).]

B. Appointed by the Board of Trustees as a vice-president, dean, director or member of the chancellor's, superintendent's or Maine Community College System executive director's immediate staff; or [2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF); 2003, c. 76, §1 (AMD); 2003, c. 76, §4 (AFF).]

C. Whose duties necessarily imply a confidential relationship with respect to matters subject to collective bargaining as between such person and the university, the academy or the Maine Community College System. [2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF); 2003, c. 76, §1 (AMD); 2003, c. 76, §4 (AFF).]

D. [2003, c. 76, §4 (AFF); 2003, c. 76, §1 (RP).]

[ 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF); 2003, c. 76, §1 (AMD); 2003, c. 76, §4 (AFF) .]

SECTION HISTORY
1975, c. 564, §38 (AMD). 1975, c. 603, §1 (NEW). 1975, c. 671, §§2-6 (AMD). 1975, c. 721, §1 (AMD). 1977, c. 581, §§2,3 (AMD). 1979, c. 602, §5 (AMD). 1985, c. 497, §7 (AMD). 1985, c. 506, §§B21,22 (AMD). 1985, c. 695, §§13-15 (AMD). 1985, c. 779, §§72,73 (AMD). 1987, c. 402, §§A155,A156 (AMD). 1987, c. 532, §6 (AMD). 1987, c. 816, §R (AMD). 1989, c. 443, §§61-63 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 76, §1 (AMD). 2003, c. 76, §4 (AFF). RR 2009, c. 2, §75 (COR).

## §1023. RIGHT OF UNIVERSITY, ACADEMY OR COMMUNITY COLLEGE EMPLOYEES TO JOIN OR REFRAIN FROM JOINING LABOR ORGANIZATIONS; PROHIBITION

A person may not directly or indirectly interfere with, intimidate, restrain, coerce or discriminate against a university, academy or community college employee or a group of university, academy or community college employees in the free exercise of their rights, given by this section, to voluntarily: [2007, c. 415, §10 (RPR).]

**1**. **Join a union.** Join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining or in the free exercise of any other right under this chapter; or

[ 2007, c. 415, §10 (NEW) .]

**2**. **Not join a union.** Refrain from joining or participating in the activities of organizations for the purposes of representation and collective bargaining, except that an employee may be required to pay to the organization that is the bargaining agent for the employee a service fee that represents the employee's pro rata share of those expenditures that are germane to the organization's representational activities.

[ 2007, c. 415, §10 (NEW) .]

SECTION HISTORY
1975, c. 603, §1 (NEW). 1975, c. 671, §7 (AMD). 1977, c. 581, §4 (RPR). 1985, c. 497, §8 (AMD). 1985, c. 506, §B23 (AMD). 1985, c. 737, §A63 (RPR). 1989, c. 443, §64 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2007, c. 415, §10 (RPR).

## §1024. BARGAINING UNITS

***(REPEALED)***

SECTION HISTORY
1975, c. 603, §1 (NEW). 1975, c. 671, §8 (RPR). 1975, c. 697, §§13,14 (AMD). 1975, c. 721, §2 (AMD). 1975, c. 770, §117 (AMD). 1977, c. 581, §§5-7 (AMD). 1977, c. 641, (AMD). 1979, c. 541, §A172 (RP).

## §1024-A. BARGAINING UNITS

**1**. **Legislative intent.** It is the express legislative intent that, in order to foster meaningful collective bargaining, units shall be structured in such a way as to avoid excessive fragmentation whenever possible. In accordance with this policy, bargaining units shall be structured on a university system-wide basis with one unit for each of the following occupational groups:

A. Faculty; [1979, c. 541, Pt. B, §31 (NEW).]

B. Professional and administrative staff; [1979, c. 541, Pt. B, §31 (NEW).]

C. Clerical, office, laboratory and technical; [1979, c. 541, Pt. B, §31 (NEW).]

D. Service and maintenance; [1979, c. 541, Pt. B, §31 (NEW).]

E. Supervisory classified; and [1979, c. 541, Pt. B, §31 (NEW).]

F. Police. [1979, c. 541, Pt. B, §31 (NEW).]

It is intended that Cooperative Extension Service employees be included in appropriate units.

[ 1985, c. 506, Pt. B, §24 (AMD) .]

**2**. **Academy units.** It is the express legislative intent to foster meaningful collective bargaining for employees of the Maine Maritime Academy. Therefore, in accordance with this policy, bargaining units shall be structured with one unit for each of the following occupational groups:

A. Faculty; [1979, c. 541, Pt. B, §31 (NEW).]

B. Administrative staff; and [1979, c. 541, Pt. B, §31 (NEW).]

C. Classified employees. [1979, c. 541, Pt. B, §31 (NEW).]

[ 1979, c. 541, Pt. B, §31 (NEW) .]

**3**. **Community colleges.** It is the express legislative intent to foster meaningful collective bargaining for employees of the community colleges. Therefore, in accordance with this policy, the bargaining units shall be structured with one unit in each of the following occupational groups:

A. Faculty and instructors; [1985, c. 695, §16 (RPR).]

B. Administrative staff; [1985, c. 695, §16 (RPR).]

C. Supervisory; [1985, c. 695, §16 (NEW).]

D. Support services; [1985, c. 695, §16 (NEW).]

E. Institutional services; and [1985, c. 695, §16 (NEW).]

F. Police. [1985, c. 695, §16 (NEW).]

[ 1989, c. 443, §65 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

**4**. **Assignment to bargaining units.** In the event of a dispute over the assignment of jobs or positions to a unit, the executive director shall examine the community of interest, including work tasks among other factors, and make an assignment to the appropriate statutory bargaining unit set forth in subsection 1, 2 or 3.

[ 1979, c. 541, Pt. B, §31 (NEW) .]

**5**. **Additional bargaining units.** Notwithstanding subsection 1, 2 or 3, the Legislature recognizes that additional or modified university system-wide units, academy units or community college units may be appropriate in the future. The employer or employee organizations may petition the executive director for the establishment of additional or modified university system-wide units, academy units or community college units. The executive director or a designee shall determine the appropriateness of those petitions, taking into consideration the community of interest and the declared legislative intent to avoid fragmentation whenever possible and to insure employees the fullest freedom in exercising the rights guaranteed by this chapter. The executive director or a designee conducting unit determination proceedings may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them.

[ 1989, c. 443, §66 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

**6**. **Students.**

A. When collective bargaining is to take place between the university and the faculty or professional and administrative staff, the board of trustees shall appoint 3 currently enrolled students who are broadly representative of the various campuses to meet and confer with the university and who may meet and confer with the bargaining agent prior to collective bargaining. [1979, c. 541, Pt. B, §31 (NEW).]

B. During the course of collective bargaining, the student representatives designated under paragraph A shall be allowed to meet and confer with the university bargaining team at reasonable intervals during the course of negotiations, these meetings to occur at least upon receipt by the university of the initial bargaining proposal of the bargaining agent and before final agreement on a contract or any major provisions thereof. The students shall be bound by the same rules of negotiation, including, but not limited to, those regarding confidentiality, as the participants in the negotiations. [1979, c. 541, Pt. B, §31 (NEW).]

[ 1979, c. 541, Pt. B, §31 (NEW) .]

**7**. **Unit clarification.** Where there is a certified or currently recognized bargaining representative and where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit, any public employer or any recognized or certified bargaining agent may file a petition for a unit clarification, provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation.

[ 1979, c. 541, Pt. B, §31 (NEW) .]

SECTION HISTORY
1979, c. 541, §B31 (NEW). 1985, c. 497, §9 (AMD). 1985, c. 506, §B24 (AMD). 1985, c. 695, §16 (AMD). 1985, c. 737, §A64 (AMD). 1989, c. 443, §§65,66 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF).

## §1025. DETERMINATION OF BARGAINING AGENT

**1**. **Voluntary recognition.** Any employee organization may file a request with the university, academy or community colleges alleging that a majority of the university, academy or community college employees in an appropriate bargaining unit as established in section 1024, wish to be represented for the purpose of collective bargaining between the university, academy or community colleges and the employees' organization. Such request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include a demonstration of majority support. Such request for recognition shall be granted by the university, academy or community colleges unless the university, academy or community colleges desire that an election determine whether the organization represents a majority of the members in the bargaining unit. In the event that the request for recognition is granted by the university, academy or community colleges, the executive director shall certify the organization so recognized as the bargaining agent.

[ 1989, c. 443, §67 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

**2**. **Elections.**

A. The executive director of the board, upon signed request of the university, academy or community college alleging that one or more university, academy or community college employees or employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of university, academy or community college employees, or upon signed petition of at least 30% of a bargaining unit of university, academy or community college employees that they desire to be represented by an organization, shall conduct a secret ballot election to determine whether the organization represents a majority of the members of the bargaining unit. Such an election may be conducted at suitable work locations or through the United States mail, and the procedures adopted and employed must ensure that neither the employee organizations or the management representatives involved in the election have access to information that would identify a voter. [1991, c. 622, Pt. O, §10 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

B. The ballot shall contain the name of such organization and that of any other organization showing written proof of at least 10% representation of the university, academy or community college employees within the unit, together with a choice for any university, academy or community college employee to designate that the employee does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot, and no one of the 3 or more choices receives a majority vote of the university, academy or community college employees voting, a run-off election shall be held. The run-off ballot shall contain the 2 choices which received the largest and 2nd largest number of votes. When an organization receives the majority of votes of those voting, the executive director shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit shall be recognized by the university, academy or community colleges as the sole and exclusive bargaining agent for all of the employees in the bargaining unit unless and until a decertification election by secret ballot shall be held and the bargaining agent declared by the executive director as not representing a majority of the unit. [1989, c. 443, §68 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

C. Whenever 30% of the employees in a bargaining unit petition for a bargaining agent to be decertified, the procedures for conducting an election on the question shall be the same as for representation as bargaining agent hereinbefore set forth. [1975, c. 603, §1 (NEW).]

D. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question concerning unit or representation may be raised except during the period not more than 90 nor less than 60 days prior to the expiration date of the agreement. [1975, c. 603, §1 (NEW).]

E. The bargaining agent certified by the executive director or a designee as the exclusive bargaining agent for a unit is required to represent all the university, academy or community college employees within the unit without regard to membership in the organization certified as bargaining agent, except that any university, academy or community college employee may present at any time that employee's grievance to the employer and have that grievance adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of any collective bargaining agreement then in effect and the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of that grievance. [1991, c. 166, (NEW); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

[ 1991, c. 622, Pt. O, §10 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

SECTION HISTORY
1975, c. 603, §1 (NEW). 1975, c. 671, §§9,10 (AMD). 1977, c. 581, §§8,9 (AMD). 1985, c. 497, §10 (AMD). 1985, c. 506, §B25 (AMD). 1989, c. 443, §§67,68 (AMD). 1991, c. 166, (AMD). 1991, c. 622, §O10 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF).

## §1026. OBLIGATION TO BARGAIN

**1**. **Negotiations.** It is the obligation of the university, academy, community college or state schools for practical nursing and the bargaining agent to bargain collectively. "Collective bargaining" means, for the purpose of this chapter, their mutual obligation:

A. To meet at reasonable times; [1989, c. 878, Pt. A, §71 (RPR).]

B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes if the parties have not otherwise agreed in a prior written contract; [1993, c. 84, §1 (AMD).]

C. To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration, except that by such obligation neither party is compelled to agree to a proposal or required to make a concession; [1993, c. 84, §1 (AMD).]

D. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation, but not to exceed 3 years; and [1989, c. 878, Pt. A, §71 (RPR).]

E. To participate in good faith in the mediation, fact finding and arbitration procedures required by this section. [1989, c. 878, Pt. A, §71 (RPR).]

[ 1993, c. 84, §1 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

**1-A**. **Additional bargaining; community college employees.** Cost items in any collective bargaining agreement of community college employees must be submitted for inclusion in the Governor's next operating budget within 10 days after the date on which the agreement is ratified by the parties. If the Legislature rejects any of the cost items submitted to it, all cost items submitted must be returned to the parties for further bargaining. "Cost items" includes salaries, pensions and insurance.

Cost items related to a collective bargaining agreement reached under this chapter and submitted to the Legislature for its approval under this subsection may not be submitted in the same legislation that contains cost items for employees exempted from the definition of "community college employee" under section 1022, subsection 11.

[ 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF); 2003, c. 76, §2 (AMD); 2003, c. 76, §4 (AFF) .]

**2**. **Mediation.**

A. It is the declared policy of the State to provide full and adequate facilities for the settlement of disputes between the employer and employees or their representatives through mediation. [1975, c. 603, §1 (NEW).]

B. Mediation procedures, as provided by section 965, subsection 2, shall be followed whenever either party to a controversy requests such services prior to arbitration, or at any time on motion of the Maine Labor Relations Board or its executive director. [1975, c. 671, §12 (AMD).]

C. The employer, union or employees involved in collective bargaining shall notify the Executive Director of the Maine Labor Relations Board, in writing, at least 30 days prior to the expiration of a contract, or 30 days prior to entering into negotiations for a first contract between the employer and the employees, or whenever a dispute arises between the parties threatening interruption of work, or under both conditions. [1975, c. 671, §12 (AMD).]

D. Nothing in this section shall be construed as preventing the parties, as an alternative to mediation under section 965, from jointly agreeing to elect mediation from either the Federal Mediation and Conciliation Service or the American Arbitration Association, in accordance with the procedures, rules and regulations of those organizations. [1975, c. 603, §1 (NEW).]

E. Any information disclosed by either party to a dispute to a mediator or to a mediation panel or any of its members in the performance of this subsection shall be privileged. [1975, c. 603, §1 (NEW).]

[ 1975, c. 671, §12 (AMD) .]

**3**. **Fact-finding.**

A. If the parties, either with or without the services of a mediator, are unable to effect a settlement of their controversy, they may jointly agree either to call upon the Maine Labor Relations Board to arrange for fact-finding services and recommendations to be provided by the Maine Board of Arbitration and

Conciliation, or to pursue some other mutually acceptable fact-finding procedure, including use of the Federal Mediation and Conciliation Service or the American Arbitration Association according to their respective procedures, rules and regulations. [1975, c. 671, §13 (AMD).]

B. If the parties do not jointly agree to call upon the Maine Labor Relations Board or to pursue some other procedure, either party to the controversy may request the executive director to assign a fact-finding panel. If so requested, the executive director shall appoint a fact-finding panel, ordinarily of 3 members, in accordance with rules and procedures prescribed by the board for making such appointments. [1975, c. 671, §13 (AMD).]

C. The fact-finding proceedings shall be as provided by section 965, subsection 3. [1975, c. 603, §1 (NEW).]

[ 1975, c. 671, §13 (AMD) .]

**4**. **Arbitration.**

A. At any time after participating in the procedures set forth in subsections 2 and 3, either party, or the parties jointly, may petition the board to initiate arbitration procedures. On receipt of the petition, the executive director shall within a reasonable time determine if an impasse has been reached; the determination must be made administratively, with or without hearing, and is not subject to appeal. If the executive director so determines, the executive director shall issue an order requiring arbitration and requesting the parties to select one or more arbitrators. If the parties, within 10 days after the issuance of the order, have not selected an arbitrator or a Board of Arbitration, the executive director shall then order each party to select one arbitrator and the 2 arbitrators so selected shall select a 3rd neutral arbitrator. If the 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the executive director shall submit identical lists to the parties of 5 or more qualified arbitrators of recognized experience and competence. Each party has 7 days from the submission of the list to delete any names objected to, number the remaining names indicating the order of preference and return the list to the executive director. In the event a party does not return the list within the time specified, all parties named therein are deemed acceptable. From the arbitrators who have been approved by both parties and pursuant to the order of mutual preference, the executive director shall appoint a neutral arbitrator. If the parties fail to agree upon any arbitrators named, or if for any other reason the appointment cannot be made from the initial list, the executive director shall then submit a 2nd list of 5 or more additional qualified arbitrators of recognized experience and competence from which they shall strike names with the determination as to which party shall strike first being determined by a random technique administered through the Executive Director of the Maine Labor Relations Board. Thereafter, the parties shall alternately strike names from the list of names submitted, provided that, when the list is reduced to 4 names, the 2nd from the last party to strike shall be entitled to strike 2 names simultaneously, after which the last party to strike shall so strike one name from the then 2 remaining names, such that the then remaining name shall identify the person who must then be appointed by the executive director as the neutral arbitrator.

Nothing in this subsection may be construed as preventing the parties, as an alternative to procedures in the preceding paragraph, from jointly agreeing to elect arbitration from either the Federal Mediation and Conciliation Service or the American Arbitration Association, under the procedures, rules and regulations of that association, provided that these procedures, rules and regulations are not inconsistent with paragraphs B and C. [2009, c. 2, §76 (COR).]

B. If the controversy is not resolved by the parties themselves, the arbitrators shall proceed as follows: With respect to a controversy over salaries, pensions and insurance, the arbitrators will recommend terms of settlement and may make findings of fact; such recommendations and findings will be advisory only and will be made, if reasonably possible, within 60 days after the selection of the neutral arbitrator. The arbitrators may in their discretion make such recommendations and findings public, and either party may make such recommendations and findings public if agreement is not reached with respect to such findings and recommendations within 10 days after their receipt from the arbitrators. With respect to a controversy over subjects other than salaries, pensions and insurance, the arbitrators shall make determinations with respect thereto if reasonably possible within 60 days after the selection of the neutral

arbitrator. Such determinations may be made public by the arbitrators or either party and if made by a majority of the arbitrators, such determinations will be binding on both parties and the parties will enter an agreement or take whatever other action that may be appropriate to carry out and effectuate such binding determinations, and such determinations will be subject to review by the Superior Court in the manner specified by section 1033. The results of all arbitration proceedings, recommendations and awards conducted under this section shall be filed with the Maine Labor Relations Board at the offices of its executive director simultaneously with the submission of the recommendations and award to the parties. In the event the parties settle their dispute during the arbitration proceeding, the arbitrator or the chairman of the arbitration panel will submit a report of his activities to the Executive Director of the Maine Labor Relations Board not more than 5 days after the arbitration proceeding has terminated. [1983, c. 153, §2 (AMD).]

C. In reaching a decision under this section, the arbitrators shall consider the following factors:

(1) The interests and welfare of the students and the public and the financial ability of the university, academy or community colleges to finance the cost items proposed by each party to the impasse;

(2) Comparison of the wages, hours and working conditions of the employees involved in the arbitration proceeding with the wages, hours and working conditions of other employees performing similar services in public and private employment competing in the same labor market;

(3) The overall compensation presently received by the employees, including direct salary and wage compensation, vacation, holidays, life and health insurance, retirement and all other benefits received;

(4) Such other factors not confined to the factors set out in subparagraphs (1) to (3), which are normally and traditionally taken into consideration in the resolution of disputes involving similar subjects of collective bargaining in public higher education;

(5) The need of the university, academy or community colleges for qualified employees;

(6) Conditions of employment in similar occupations outside the university, academy or community colleges;

(7) The need to maintain appropriate relationships between different occupations in the university, academy or community colleges; and

(8) The need to establish fair and reasonable conditions in relation to job qualifications and responsibilities. [1989, c. 443, §70 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

[ 2009, c. 2, §76 (COR) .]

**5**. **Costs.** The following costs must be shared equally by the parties to the proceedings: the costs of the fact-finding board, including, if any, per diem expenses and actual and necessary travel and subsistence expenses; the costs of the neutral arbitrator or arbitrators, including, if any, per diem expenses and actual and necessary travel and subsistence expenses; the costs of the Federal Mediation and Conciliation Service or the American Arbitration Association; and the costs of hiring the premises where any fact-finding or arbitration proceedings are conducted. All other costs must be assumed by the party incurring them. The services of the Panel of Mediators and the State Board of Arbitration and Conciliation and any state allocation program charges must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the Panel of Mediators and the State Board of Arbitration and Conciliation is the responsibility of the executive director. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing or

the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action.

[ 1991, c. 798, §7 (AMD) .]

SECTION HISTORY
1975, c. 564, §38 (AMD). 1975, c. 603, §1 (NEW). 1975, c. 671, §§11-16 (AMD). 1975, c. 717, §7 (AMD). 1977, c. 581, §§10-13 (AMD). 1979, c. 501, §4 (AMD). 1983, c. 127, (AMD). 1983, c. 153, §§1,2 (AMD). 1985, c. 6, (AMD). 1985, c. 497, §§11,12 (AMD). 1985, c. 506, §§B26,27 (AMD). 1985, c. 737, §§A65,66 (AMD). 1989, c. 443, §§69,70 (AMD). 1989, c. 596, §N5 (AMD). 1989, c. 878, §A71 (AMD). 1991, c. 622, §O11 (AMD). 1991, c. 798, §7 (AMD). 1993, c. 84, §1 (AMD). 1999, c. 16, §F1 (AMD). 2001, c. 559, §JJ1 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 76, §2 (AMD). 2003, c. 76, §4 (AFF). RR 2009, c. 2, §76 (COR).

## §1027. PROHIBITED ACTS OF THE UNIVERSITY, UNIVERSITY EMPLOYEES AND UNIVERSITY EMPLOYEE ORGANIZATIONS

**1**. **University, academy and community colleges; prohibitions.** The university, its representatives and agents, the academy, its representatives and agents and the community colleges, their representatives and agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1023; [1975, c. 603, §1 (NEW).]

B. Encouraging or discouraging membership in any employee organization by discrimination in regard to hire or tenure of employment or any term or condition of employment; [1975, c. 603, §1 (NEW).]

C. Dominating or interfering with the formation, existence or administration of any employee organization; [1975, c. 603, §1 (NEW).]

D. Discharging or otherwise discriminating against an employee because the employee has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter; [1989, c. 443, §71 (AMD).]

E. Refusing to bargain collectively with the bargaining agent of its employees as required by section 1026; [2007, c. 415, §11 (AMD).]

F. Blacklisting of any employee organization or its members for the purpose of denying them employment; [2007, c. 415, §12 (AMD).]

G. Requiring an employee to join a union, employee association or bargaining agent as a member; and [2007, c. 415, §13 (NEW).]

H. Terminating or disciplining an employee for not paying union dues or fees of any type. [2007, c. 415, §14 (NEW).]

[ 2007, c. 415, §§11-14 (AMD) .]

**2**. **University, academy, community colleges; prohibitions.** University employees, university employee organizations, their agents, members and bargaining agents; academy employees, academy employee organizations, their agents, members and bargaining agents; and community college employees, community college employee organizations, their agents, members and bargaining agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1023 or the university, academy and community colleges in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances; [1989, c. 443, §72 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

B. Refusing to bargain collectively with the university, academy and community colleges as required by section 1026; and [1989, c. 443, §72 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

C. Engaging in:

(1) A work stoppage, slowdown or strike; and

(2) The blacklisting of the university, academy or community colleges for the purpose of preventing them from filling employee vacancies. [1989, c. 443, §72 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

[ 1989, c. 443, §72 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

**3**. **Negotiation of union security.** Nothing in this chapter shall be interpreted to prohibit the negotiation of union security, excepting closed shop.

[ 1975, c. 603, §1 (NEW) .]

**3-A**. **Negotiation of initial probationary period.** The length and terms of an employee's probationary period upon initial employment is a negotiable item in accordance with the procedures set forth in section 1026, except that, at a minimum, the probationary period must include the first 6 months of the employee's active employment. During the initial 6 months of active employment, an employee may be terminated without just cause.

[ 2003, c. 76, §3 (NEW); 2003, c. 76, §4 (AFF) .]

**4**. **Violations.** Violations of this section shall be processed by the board in the manner provided in section 1029.

[ 1975, c. 603, §1 (NEW) .]

SECTION HISTORY
1975, c. 603, §1 (NEW). 1975, c. 671, §§17-20 (AMD). 1977, c. 78, §165 (AMD). 1977, c. 581, §§14,15 (AMD). 1985, c. 497, §§13,14 (AMD). 1985, c. 506, §§B28,29 (AMD). 1985, c. 737, §A67 (AMD). 1989, c. 443, §§71,72 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 76, §3 (AMD). 2003, c. 76, §4 (AFF). 2007, c. 415, §§11-14 (AMD).

## §1028. RULE MAKING PROCEDURE AND REVIEW OF PROCEEDINGS

**1**. **Rule making procedure.** Proceedings conducted under this chapter shall be subject to the rules and procedures of the board promulgated under section 968, subsection 3.

[ 1975, c. 603, §1 (NEW) .]

**2**. **Review of representation proceedings.** Any person aggrieved by any ruling or determination of the executive director under sections 1024-A and 1025 may appeal, within 15 days of the announcement of the ruling or determination, except that in the instance of objections to the conduct of an election or challenged ballots the time period is 5 working days, to the Maine Labor Relations Board. Upon receipt of such an appeal, the board shall within a reasonable time hold a hearing, having first caused 7 days' notice, in writing, of the time and place of the hearings to be given to the aggrieved party, the labor organizations or bargaining agent and the public employer. The hearings and the procedures established in furtherance thereof must be in accordance with section 968. Decisions of the board made pursuant to this subsection are subject to review by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in accordance with the standards specified in section 972, if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested.

[ 2007, c. 695, Pt. C, §17 (AMD) .]

SECTION HISTORY
1975, c. 564, §38 (AMD). 1975, c. 603, §1 (NEW). 1975, c. 671, §21 (AMD). 1975, c. 697, §15 (AMD). 1975, c. 770, §115 (AMD). 1991, c. 143, §6 (AMD). 1993, c. 90, §6 (AMD). 2007, c. 695, Pt. C, §17 (AMD).

## §1029. PREVENTION OF PROHIBITED ACTS

**1**. **Board power to prevent prohibited acts.** The board is empowered, as provided, to prevent any person, the university, any university employee, any university employee organizations, the academy, any academy employees, any academy employee organizations, the community colleges, any community college employee, any community college employee organizations; or any bargaining agent from engaging in any of the prohibited acts enumerated in section 1027. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise.

[ 1989, c. 443, §73 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

**2**. **Complaints.** The university, any university employee, any university employee organization, the academy, any academy employee, any academy employee organization, the community colleges, any community college employee, any community college employee organization, or any bargaining agent which believes that any person, the university, any university employee, any university employee organization, the academy, any academy employee, any academy employee organization, the community colleges, any community college employee, any community college employee organization or any bargaining agent has engaged in or is engaging in any such prohibited practice may file a complaint with the executive director of the board stating the charges in that regard. No such complaint shall be filed with the executive director until the complaining party shall have served a copy thereof upon the party named in the complaint. Upon receipt of such complaint, the executive director or a designee shall review the charge to determine whether the facts as alleged may constitute a prohibited act. If it is determined that the facts do not, as a matter of law, constitute a violation, the charge shall be dismissed by the executive director, subject to review by the board. If a formal hearing is deemed necessary by the executive director or by the board, the executive director shall serve upon the parties to the complaint a notice of the prehearing conference and of the hearing for the prehearing conference or the hearing, as appropriate, provided that no hearing shall be held based upon any alleged prohibited practice occurring more than 6 months prior to the filing of the complaint with the executive director. The party complained of shall have the right to file a written answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed for the hearing. In the discretion of the board, any other person or organization may be allowed to intervene in that proceeding and to present testimony. Nothing in this subsection may restrict the right of the board to require the executive director or a designee to hold a prehearing conference on any prohibited practice complaint prior to the

hearing before the board and taking whatever action, including dismissal, attempting to resolve disagreements between the parties or recommending an order to the board, as the executive director or a designee may deem appropriate, subject to review by the board.

[ 1989, c. 443, §74 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

**3**. **Board action after hearing and argument.** After hearing and argument, if, upon a preponderance of the evidence received, the board shall be of the opinion that any party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall, in writing, state its findings of fact and the reasons for its conclusions and shall issue and cause to be served upon such party an order requiring such party to cease and desist from such prohibited practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or dismissed, or the payment to him of any back pay, if such individual was suspended or dismissed for cause.

[ 1975, c. 603, §1 (NEW) .]

**4**. **Dismissals.** After hearing and argument, if, upon a preponderance of the evidence received, the board shall not be of the opinion that the party named in the complaint has engaged in or is engaging in any such prohibited practice, then the board shall, in writing, state its findings of fact and the reasons for its conclusions and shall issue an order dismissing said complaint.

[ 1975, c. 603, §1 (NEW) .]

**5**. **Failure to comply with board order.** If after the issuance of an order by the board requiring any party to cease and desist or to take any other affirmative action, said party fails to comply with the order of the board, then the party in whose favor the order operates or the board may file a civil action in the Superior Court in Kennebec County, to compel compliance with the order of the board. In such action to compel compliance, the Superior Court shall not review the action of the board other than to determine questions of law. If an action to review the decision of the board is pending at the time of the commencement of an action for enforcement pursuant to this subsection or is thereafter filed, the 2 actions shall be consolidated.

[ 1975, c. 603, §1 (NEW) .]

**6**. **Simultaneous injunctive relief.** Whenever a complaint is filed with the executive director of the board alleging that the university, academy or community colleges have violated section 1027, subsection 1, paragraph F, or alleging that an employee, employee organization or bargaining agent of the university, academy or community colleges have violated section 1027, subsection 2, paragraph C, the party making the complaint may simultaneously seek injunctive relief from the Superior Court in the county in which the prohibited practice is alleged to have occurred pending the final adjudication of the board with respect to such matter.

[ 1989, c. 443, §75 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

**7**. **Court review.** Either party may seek a review by the Superior Court in Kennebec County of a decision or order of the Maine Labor Relations Board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall set the complaint down for hearing and shall cause all interested parties and the board to be notified. The hearing may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it determines just and proper; except that the

board's decision or order is not stayed except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the finding of the board on questions of fact is final unless shown to be clearly erroneous. Any appeal to the Law Court must be the same as an appeal from an interlocutory order under section 6.

[ 2011, c. 559, Pt. A, §28 (AMD) .]

**8**. **Judicial proceeding involving injunctive relief.** In any judicial proceeding authorized by this subsection in which injunctive relief is sought, subsections 5 and 6 shall apply, except that neither an allegation nor proof of unavoidable substantial and irreparable injury to the complainant's property shall be required to obtain a temporary restraining order or injunction.

[ 1975, c. 603, §1 (NEW) .]

SECTION HISTORY
1975, c. 564, §38 (AMD). 1975, c. 603, §1 (NEW). 1975, c. 671, §§22-25 (AMD). 1975, c. 697, §§16-18 (AMD). 1977, c. 581, §§16-18 (AMD). 1979, c. 541, §A173 (AMD). 1985, c. 497, §§15-17 (AMD). 1985, c. 506, §§B30-32 (AMD). 1985, c. 737, §§A68,69 (AMD). 1989, c. 443, §§73-75 (AMD). 1991, c. 143, §7 (AMD). RR 1993, c. 1, §69 (COR). 1993, c. 90, §7 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2011, c. 559, Pt. A, §28 (AMD).

## §1030. HEARINGS

**1**. **Conduct of hearings.** Hearings conducted by the board shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other evidence deemed relevant by the board may be received.

[ 1975, c. 603, §1 (NEW) .]

**2**. **Power of chairman.** The chairman shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to the board for determination. Witnesses subpoenaed by the board shall be allowed the same fees as are paid to witnesses in the Superior Court. These fees, together with all necessary expenses of the board, shall be paid by the Treasurer of State on warrants drawn by the State Controller.

[ 1975, c. 603, §1 (NEW) .]

SECTION HISTORY
1975, c. 603, §1 (NEW).

## §1031. SCOPE OF BINDING CONTRACT ARBITRATION

A collective bargaining agreement between the university, the academy or the community colleges and a bargaining agent may provide for binding arbitration as the final step of a grievance procedure but the only grievances which may be taken to such binding arbitration shall be disputes between the parties as to the meaning or application of the specific terms of collective bargaining agreement. An arbitrator with the power

to make binding decisions pursuant to any such provisions shall have no authority to add to, subtract from or modify the collective bargaining agreement. [1989, c. 443, §76 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

SECTION HISTORY
1975, c. 603, §1 (NEW). 1975, c. 671, §26 (AMD). 1977, c. 581, §19 (AMD). 1985, c. 497, §18 (AMD). 1985, c. 506, §B33 (AMD). 1985, c. 737, §A70 (RPR). 1989, c. 443, §76 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF).

## §1032. SUITS BY AND AGAINST UNINCORPORATED EMPLOYEE ORGANIZATIONS

In any judicial proceeding brought under this chapter or to enforce any of the rights guaranteed by this chapter, any unincorporated employee organization may sue or be sued in the name by which it is known. [1975, c. 603, §1 (NEW).]

SECTION HISTORY
1975, c. 603, §1 (NEW).

## §1033. REVIEW OF ARBITRATION AWARDS

**1**. **Court review.** Either party may seek a review by the Superior Court of a binding determination by an arbitration panel. Such review shall be sought in accordance with the Maine Rules of Civil Procedure, Rule 80B.

[ 1979, c. 541, Pt. A, §174 (AMD) .]

**2**. **Determination final on questions of fact.** In the absence of fraud, the binding determination of an arbitration panel or arbitrator shall be final upon all questions of fact.

[ 1975, c. 603, §1 (NEW) .]

**3**. **Power of reviewing court.** The court may, after consideration, affirm, reverse or modify any such binding determination or decision based upon an erroneous ruling or finding of law. An appeal may be taken to the law court as in any civil action.

[ 1975, c. 603, §1 (NEW) .]

SECTION HISTORY
1975, c. 603, §1 (NEW). 1979, c. 541, §A174 (AMD).

## §1034. SEPARABILITY

**1**. **Severability.** If any clause, sentence, paragraph or part of this chapter, or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter and the application of such provision to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this chapter would have been adopted had such invalid provisions not been included.

[ 1975, c. 603, §1 (NEW) .]

**2**. **No restriction on eligibility for federal grant-in-aid or assistance programs.** Nothing in this chapter or any contract negotiated pursuant to this chapter may in any way be interpreted or allowed to restrict or impair the eligibility of the university, any of its campuses or units, academy or community colleges in obtaining the benefits under any federal grant-in-aid or assistance programs.

[ 1989, c. 443, §77 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

SECTION HISTORY
1975, c. 603, §1 (NEW). 1975, c. 671, §27 (AMD). 1977, c. 581, §20 (AMD). 1985, c. 497, §19 (AMD). 1985, c. 506, §B34 (AMD). 1989, c. 443, §77 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF).

## §1035. PUBLICATION OF INITIAL PROPOSALS

Either party to negotiations may publicize the parties' written initial collective bargaining proposals. No proposals may be publicized until 10 days after both parties have made their initial proposal. [1979, c. 125, §3 (NEW).]

SECTION HISTORY
1979, c. 125, §3 (NEW).

## §1036. CONTINUATION OF GRIEVANCE ARBITRATION PROVISIONS

If a contract between a public employer and a bargaining agent signed after October 1, 2005 expires prior to the parties' agreement on a new contract, the grievance arbitration provisions of the expired contract remain in effect until the parties execute a new contract. In any arbitration that is conducted pursuant to this section, an arbitrator shall apply only those provisions enforceable by virtue of the static status quo doctrine and may not add to, restrict or modify the applicable static status quo following the expiration of the contract, unless the parties have otherwise agreed in the collective bargaining agreement. All such grievances that are appealed to arbitration are subject exclusively to the grievance and arbitration process contained in the expired agreement and the board does not have jurisdiction over such grievances. The arbitrator's determination is subject to appeal pursuant to the Uniform Arbitration Act. Disputes over which provisions in an expired contract are enforceable by virtue of the static status quo doctrine first must be resolved by the board, subject to appeal pursuant to applicable law. The grievance arbitration is stayed pending resolution of this issue by the board. The board may adopt rules as necessary to establish a procedure to implement the intent of this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Nothing in this section expands, limits or modifies the scope of any grievance arbitration provisions, including procedural requirements. [2005, c. 324, §3 (NEW).]

SECTION HISTORY
2005, c. 324, §3 (NEW).

# Chapter 13: UNEMPLOYMENT COMPENSATION

## Subchapter 1: GENERAL PROVISIONS

### §1041. SHORT TITLE

This chapter shall be known and may be cited as the "Employment Security Law".

### §1042. POLICY

Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this State. Unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which may fall upon the unemployed worker, his family and the entire community. The achievement of social security requires protection against this greatest hazard of our economic life. This objective can be furthered by operating free public employment offices in affiliation with a nation-wide system of public employment services; by devising appropriate methods for reducing the volume of unemployment; and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power, promoting the use of the highest skills of unemployed workers and limiting the serious social consequences of unemployment.

### §1043. DEFINITIONS

As used in this chapter, unless the context clearly requires otherwise, the following words shall have the following meanings.

**1**. **Agricultural labor.**

A. On and after January 1, 1978, "agricultural labor" includes any service performed:

(1) On a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural, aquacultural, or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife;

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended, 12 U.S.C. 1141J, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) In the employ of the operator of a farm, in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than 1/2 of the commodity with respect to which such service is performed; in the employ of a group of operators of farms, or a cooperative organization of which such operators are members, in the performance of service described in this subparagraph, but only if such operators produced more than 1/2 of the commodity with respect to which such service is performed. The provisions of this subparagraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for consumption; hatching or processing of poultry, transportation of poultry; grading of eggs or

packing of eggs, transportation of eggs; the processing of any meat product or the transportation of any meat product; or to any potato packing business which customarily operates during a regularly recurring period of at least 140 working days in a calendar year; or

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business. [1979, c. 515, §1-A (AMD).]

B. As used in paragraph A, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. [1977, c. 570, §1 (NEW).]

[ 1979, c. 515, §1-A (AMD) .]

**1-A**. **Annual average weekly wage.** "Annual average weekly wage," as used to establish the maximum weekly benefit amount for purposes of this chapter, means 1/52 of aggregate total wages paid in Maine covered employment, as reported on employer contribution reports for the calendar year, divided by the arithmetic mean of midmonth weekly covered employment reported on employer contribution reports for the calendar year.

[ 1985, c. 591, §1 (NEW) .]

**2**. **Annual payroll.** "Annual payroll" means the total amount of wages paid by an employer during a calendar year, not meaning, however, to include that part of individual wages or salaries in excess of $3,000 in any calendar year through 1971, $4,200 in any calendar year through 1977, $6,000 in any calendar year through 1982, $7,000 in any calendar year through 1999 and $12,000 in any subsequent calendar year.

[ 1999, c. 555, §1 (AMD) .]

**3**. **Base period.** "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year; provided that if the first quarter of the last 5 completed calendar quarters was included in the base period applicable to any individual's previous benefit year, his base period shall be the last 4 completed calendar quarters. In the case of a combined-wage claim pursuant to the arrangement approved by the secretary in accordance with section 1082, subsection 12, the base period shall be that applicable under the unemployment compensation law of the paying state.

[ 1973, c. 555, §4 (AMD) .]

**3-A**. **Alternate base period.** For benefit years effective on or after September 27, 1992 for any individual who fails to meet the eligibility requirements of section 1192, subsection 5 in the base period as defined in subsection 3, the Department of Labor shall make a redetermination of eligibility based on a base period that consists of the last 4 completed calendar quarters immediately preceding the first day of the individual's benefit year. This base period is known as the "alternate base period." If wage information for the most recent quarter of the alternate base period is not available to the department from regular quarterly reports of wage information that is systematically accessible, the department shall gather the necessary data in accordance with rules established for this purpose.

If the department receives information from the employer that causes a revised monetary determination under this subsection, benefits received prior to that revision may not constitute an overpayment of benefits provided the claimant did not knowingly misrepresent information requested by the department.

Wages that fall within the base period of claims established under this subsection are not available for reuse in qualifying for any subsequent benefit years under section 1192.

In the case of a combined-wage claim pursuant to the arrangement approved by the United States Secretary of Labor in accordance with section 1082, subsection 12, the base period is that base period applicable under the unemployment compensation law of the paying state.

[ 1995, c. 9, §1 (AMD) .]

**4**. **Benefits.** "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

**5**. **Benefit year.** "Benefit year" means the one-year period beginning with the date with respect to which an insured worker files a request for determination of the worker's insured status, and thereafter the one-year period beginning with the date with respect to which the worker next files such a request after the end of the worker's last preceding benefit year. If an insured worker files a request for determination of the worker's insured status during a week in which one calendar quarter ends and another begins, the benefit year for applicable base period identity purposes is deemed to begin on the first day of the new calendar quarter.

A. [1985, c. 591, §2 (RP).]

B. A dislocated worker, as defined in section 1196, subsection 1, enrolled in a training program approved under section 1192, subsection 6, 6-A, 6-C, 6-D or 6-E who has exhausted the worker's benefit year within 30 months of the worker's enrollment in the training program is entitled to the product of the worker's most recent weekly benefit amount multiplied by the number of weeks in which that person is in an approved training program, up to a maximum of 26 weeks, provided that no benefits may be paid under this paragraph to any person:

(1) Until the person has exhausted benefits for which that person is eligible under any unemployment insurance benefit program funded in whole or in part by the State Government or Federal Government; or

(2) Who is eligible for or who has exhausted, after the effective date of this paragraph, trade adjustment allowances as provided by the United States Trade Act of 1974, Title II, Chapter 2, Public Law 93-617, United States Code, Title 19, Section 2291, et seq., and any amendments or additions thereto, or a similar successor provision of that Act, except that any individual who was eligible for and received less than 26 weeks of benefits under the United States Trade Act may receive benefits for the number of weeks by which their benefits under that Act are less than 26 weeks. [2009, c. 271, §1 (AMD).]

In the case of a combined-wage claim pursuant to the arrangement approved by the secretary in accordance with section 1082, subsection 12, the benefit year is that applicable under the unemployment compensation law of the paying state.

[ 2009, c. 271, §1 (AMD) .]

**5-A**. **Bureau of Unemployment Compensation.** "Bureau" means the Bureau of Unemployment Compensation, the former Division of Unemployment Compensation in the Bureau of Employment Security.

[ 1995, c. 560, Pt. G, §10 (RPR) .]

**5-A**. **Bureau of Employment Security.**

[ 1979, c. 579, §3 (NEW); 1979, c. 651, §47 (RP) .]

**6**. **Calendar quarter.** "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31st, June 30th, September 30th or December 31st.

**6-A**. **Client company.** "Client company" means a person, association, partnership, corporation or other entity that leases employees from an employee leasing company pursuant to contract.

[ 1991, c. 468, §2 (NEW) .]

**7**. **Commission.** "Commission" means the 3-member Unemployment Insurance Commission.

[ 1983, c. 351, §3 (AMD) .]

**7-A**. **Commissioner.** "Commissioner" means the Commissioner of Labor.

[ 1981, c. 168, §10 (AMD) .]

**7-B**. **Domestic abuse.** "Domestic abuse" means any of the following acts between any family or household members or sexual partners whether or not they have lived together:

A. Attempting to cause or causing bodily injury or offensive physical contact including sexual assaults; [1991, c. 560, §1 (NEW).]

B. Attempting to place or placing another in fear of bodily injury through any course of conduct including, but not limited to, threatening, harassing or tormenting behavior; [1991, c. 560, §1 (NEW).]

C. Compelling a person by force, threat of force or intimidation to engage in conduct from which the person has a right or privilege to abstain or to abstain from conduct in which the person has a right to engage; [1991, c. 560, §1 (NEW).]

D. Knowingly restricting substantially the movements of another person without that person's consent or other lawful authority by: removing that person from that person's residence, place of business or school; moving that person a substantial distance from the vicinity where that person was found; or confining that person for a substantial period either in the place where the restriction commenced or in a place to which that person has been moved; [1991, c. 560, §1 (NEW).]

E. Communicating to a person a threat to commit, or cause to be committed, a crime of violence dangerous to human life against the person to whom the communication is made or another, and the natural and probable consequence of the threat, whether or not that consequence in fact occurs, is to place the person to whom the threat is communicated, or the person against whom the threat is made, in reasonable fear that the crime will be committed; or [1991, c. 560, §1 (NEW).]

F. Repeatedly intimidating or harassing a person with the intention of causing fear or intimidation. [1991, c. 560, §1 (NEW).]

[ 1991, c. 560, §1 (NEW) .]

**8**. **Money payments to the State Unemployment Compensation Fund.**

A. "Contributions" means the money payments required by this chapter to be made into the fund by an employer on account of having individuals performing services for him. [1973, c. 555, §6 (RPR).]

B. "Payments in lieu of contributions" means the money payments made into the fund by an employer pursuant to section 1221, subsections 11 and 13. [1973, c. 555, §6 (RPR).]

[ 1973, c. 555, §6 (RPR) .]

**8-A**. **Employee leasing company.** "Employee leasing company" means a business entity that engages in the business of leasing employees to client companies without the client company severing an employer-employee relationship with the employees for services performed for the client company.

[ 1991, c. 468, §2 (NEW) .]

**9**. **Employer.** "Employer" means:

A. [1979, c. 541, Pt. A, §175 (RP).]

A-1. Any employing unit which:

(1) During any calendar quarter in either the current or preceding calendar year paid wages of $1,500 or more; or

(2) For some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or the preceding calendar year, has or had in employment one or more individuals, irrespective of whether the same individual was employed in each such day; [1979, c. 541, Pt. A, §176 (AMD).]

B. Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter;

C. Any individual or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under paragraphs A, A-1 or H; [1971, c. 538, §5 (AMD).]

D. Any employing unit which together with one or more other employing units is owned or controlled, by legally enforceable means or otherwise, directly or indirectly by the same interests, or which owns or controls one or more other employing units, by legally enforceable means or otherwise, and which, if treated as a single unit with such other employing unit, or interests, or both, would be an employer under paragraph A-1, H or J; [1985, c. 348, §1 (AMD).]

E. Any employing unit not an employer by reason of any other paragraph of this subsection, for which within either the current or preceding calendar year service in employment is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a State Unemployment Fund; or which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such Act, to be an employer under this chapter; [1971, c. 538, §5 (AMD).]

F. Any employing unit which, having become an employer under paragraphs A, A-1, B, C, D, E, G, H, J or K has not, under section 1222, ceased to be an employer subject to this chapter, or for the effective period of its election pursuant to section 1222, subsection 3, any other employing unit which has elected to become fully subject to this chapter; [1979, c. 541, Pt. A, §177 (AMD).]

G. Any individual or employing unit that acquired any part of the organization, trade or business or assets of another, and the acquired part, had it previously been treated as a separate unit, would have been an employer under paragraphs A, A-1, H or J; [1997, c. 293, §1 (AMD).]

H. Any employing unit for which service in employment, as defined in subsection 11, paragraph A-1, subparagraph (3) is performed after December 31, 1971; [1971, c. 538, §6 (NEW).]

I. Any employing unit for which service in employment, as defined in subsection 11, paragraph A-1, subparagraph (1), is performed after December 31, 1971; [1971, c. 538, §6 (NEW).]

J. Any employing unit for which agricultural labor as defined in subsection 11, paragraph A-2 is performed after December 31, 1977; [1977, c. 570, §4 (NEW).]

K. Any employing unit for which domestic service in employment as defined in subsection 11, paragraph A-3 is performed after December 31, 1977; [1977, c. 570, §4 (NEW).]

L. In determining whether or not an employing unit for which service, other than domestic service, is also performed is an employer under paragraphs A-1, H, I or J, wages earned or the employment of an employee performing domestic service after December 31, 1977, shall not be taken into account; or [1979, c. 541, Pt. A, §178 (AMD).]

M. In determining whether or not an employing unit for which service, other than agricultural labor, is also performed is an employer under paragraphs A-1, H, I or K, the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for the purposes of paragraph A-1. [1977, c. 570, §4 (NEW).]

N. If 2 or more related corporations concurrently employ the same individual and compensate that individual through a common paymaster which is one of the corporations, those corporations shall be considered to be a single employer, and each of the corporations shall be considered to have paid as wages to the individual only the amounts actually disbursed by it to the individual and shall not be considered to have paid as wages to the individual amounts actually disbursed to the individual by another of the corporations. [1979, c. 146, (NEW).]

[ 1997, c. 293, §1 (AMD) .]

**10**. **Employing unit.** "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1935 had in its employ one or more individuals performing services for it within this State. On and after January 1, 1978, "employing unit" shall also mean the State or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions. All individuals performing services within this State for any employing unit which maintains 2 or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection 9 or section 1222, subsection 3, the employing unit shall for all the purposes of this chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such work; except that each such contractor or subcontractor who is an employer by reason of subsection 9 or section 1222, subsection 3, shall alone be liable for the employer's contributions measured by wages to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection 9 or section 1222, subsection 3 may recover the same from such contractor or subcontractor. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work.

[ 1977, c. 570, §5 (AMD) .]

**11**. **Employment.** "Employment," except as otherwise provided in paragraph F, subparagraph (2), means any service performed prior to July 26, 1940 which was employment as defined in this subsection prior to such date, and subject to the other provisions of this subsection service performed after July 26, 1940, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied.

If the services performed during 1/2 or more of any pay period by an individual for the person employing him constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than 1/2 of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period of not more than 31 consecutive days for which a payment of remuneration is ordinarily made to the individual by the person employing him. This paragraph shall not be applicable with respect to services performed in a pay period by an individual for the person employing him, where any of such service is excepted by paragraph F, subparagraph (3).

A. The term "employment" shall include an individual's entire service, performed within or both within and without this State if:

(1) The service is localized in this State; or

(2) The service is not localized in any state but some of the service is performed in this State and the base of operations, or if there is no base of operations, then the place from which such service is directed or controlled, is in this State, or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(3) The term "employment" shall include an individual's service, wherever performed within the United States or Canada, in the employ of an American employer, other than service which is deemed employment under the unemployment compensation law of any other state or Canada, and the place from which the service is directed or controlled is in this State. [1979, c. 515, §2 (AMD).]

A-1. After December 31, 1971, employment includes:

(1) Notwithstanding paragraph F, except as herein provided, service performed by an individual, prior to January 1, 1978, in the employ of this State or any of its instrumentalities, or in the employ of this State and one or more states or their instrumentalities, for a hospital or institution of higher education located in this State, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of Section 3306 (c)(7) of that Act and service performed after December 31, 1977, in the employ of this State or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions; provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by Section 3306 (c)(7) of that Act and is not excluded under paragraph F, subparagraph (17);

(2) Any service performed by an individual as an agent-driver or commission-driver engaged in laundry or dry-cleaning services, or in distributing meat products, vegetable products, fruit products, bakery products, beverages, other than milk, for that individual's principal; as a traveling or city sales representative, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, that individual's principal, except for side-line sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors or operators of hotels, restaurants or other similar establishments for merchandise for resale or supplies for use in their business operations;

(3) Notwithstanding paragraph F, except as herein provided, service performed in the employ of a religious, charitable, educational or other organization that is excluded from the term employment as defined in the Federal Unemployment Tax Act solely by reason of Section 3306 (c)(8) of that Act; and the organization had 4 or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time; and such services are not excluded under paragraph F, subparagraph (17), divisions (a) through (i);

(4) The service of an individual who is a citizen of the United States, performed outside the United States, after December 31, 1971, except in Canada, in the employ of an American employer, other than service that is deemed employment under paragraph A, if:

(a) The employer's principal place of business in the United States is located in this State;

(b) The employer has no place of business in the United States, but the employer is an individual who is a resident of this State; or the employer is a corporation that is organized under the laws of this State; or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this State is greater than the number who are residents of any other state;

(c) None of the criteria of divisions (a) and (b) is met but the employer has elected coverage in this State or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this State; or

(d) An American employer, for purposes of this subparagraph, means a person who is an individual who is a resident of the United States; or a partnership if 2/3 or more of the partners are residents of the United States; or a trust, if all of the trustees are residents of the United States; or a corporation organized under the laws of the United States or of any state. [2011, c. 691, Pt. A, §26 (AMD).]

A-2. After December 31, 1977, employment shall include:

(1) Service performed by an individual in agricultural labor as defined in subsection 1 when:

(a) Such service is performed for a person who:

(i) During any calendar quarter in either the current or preceding calendar year paid wages of $20,000 or more to individuals employed in agricultural labor; or

(ii) For some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment of time.

(b) Notwithstanding the provisions of subsection 10, for the purposes of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

(i) If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(ii) If such individual is not an employee of such other person within the meaning of subsection 9.

(c) For the purposes of this paragraph, in the case of any individual who is furnished by a crew leader to perform services in agricultural labor for any other person and who is not treated as an employee of such crew leader under division (b):

(i) Such other person and not the crew leader shall be treated as the employer of such individuals; and

(ii) Such other person shall be treated as having paid wages to such individual in an amount equal to the amount of wages paid to such individual by the crew leader, either on his own behalf or on behalf of such other person for the service in agricultural labor performed for such other person.

(d) For the purposes of this paragraph, the term "crew leader" means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person,

(ii) Pays either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them, and

(iii) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person. [1979, c. 127, §159 (AMD).]

A-3. After December 31, 1977, the term "employment" shall include domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid wages of $1,000 or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter. [1977, c. 570, §11 (NEW).]

B. Services performed within this State but not covered under paragraph A shall be deemed to be employment subject to this chapter, if contributions are not required and paid with respect to such services under an unemployment compensation or employment security law of any other state or of the Federal Government.

C. Services not covered under paragraph A, and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation or employment security law of any other state or of the Federal Government, shall be deemed to be employment subject to this chapter, if the individual performing such services is a resident of this State and the bureau approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter. [1979, c. 651, §§44,47 (AMD).]

D. Service shall be deemed to be localized within a state if:

(1) The service is performed entirely within such state; or

(2) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Notwithstanding any other provisions of this section, the term "employment" shall include all service performed after January 1, 1947 by an officer or member of the crew of an American vessel on or in connection with such vessel, providing that the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed or controlled, is within this State.

E. Services performed by an individual for remuneration are considered to be employment subject to this chapter unless it is shown to the satisfaction of the bureau that the individual is free from the essential direction and control of the employing unit, both under the individual's contract of service and in fact, and the employing unit proves that the individual meets all of the criteria in subparagraph (1) and criteria of at least 3 divisions of subparagraph (2). In order for an individual to be considered an independent contractor:

(1) The following criteria must be met:

(a) The individual has the essential right to control the means and progress of the work except as to final results;

(b) The individual is customarily engaged in an independently established trade, occupation, profession or business;

(c) The individual has the opportunity for profit and loss as a result of the services being performed for the other individual or entity;

(d) The individual hires and pays the individual's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work; and

(e) The individual makes the individual's services available to some client or customer community even if the individual's right to do so is voluntarily not exercised or is temporarily restricted; and

(2) At least 3 of the following criteria must be met:

(a) The individual has a substantive investment in the facilities, tools, instruments, materials and knowledge used by the individual to complete the work;

(b) The individual is not required to work exclusively for the other individual or entity;

(c) The individual is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;

(d) The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work;

(e) Payment to the individual is based on factors directly related to the work performed and not solely on the amount of time expended by the individual;

(f) The work is outside the usual course of business for which the service is performed; or

(g) The individual has been determined to be an independent contractor by the federal Internal Revenue Service. [2011, c. 643, §14 (AFF); 2011, c. 643, §6 (RPR).]

F. The term "employment" does not include:

(1) Service performed in the employ of this State, or of any political subdivision thereof, or of any instrumentality of this State or its political subdivisions, except as provided by this subsection;

(2) Service performed in the employ of the United States Government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by this chapter, except that on and after January 1, 1940 to the extent that the Congress of the United States has permitted states to require any instrumentalities of the United States to make payments into an unemployment compensation fund under a state unemployment compensation or employment security law, all of the provisions of this chapter are applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. If this State is not certified for any year by the Secretary of Labor under the federal Internal Revenue Code, Section 3304, the payments required of such instrumentalities with respect to that year must be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 1225, subsection 5, with respect to contributions erroneously collected;

(3) Service with respect to which unemployment compensation is payable under an unemployment compensation system or employment security system established by an Act of Congress. The commissioner is authorized and directed to enter into agreements with the proper agencies under such an Act of Congress, which agreements become effective 10 days after publication thereof in the manner provided in section 1082, subsection 2, for regulations, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such an Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such an Act of Congress, acquired rights to benefits under this chapter;

(4) Agricultural labor as defined in subsection 1, except as provided in paragraph A-2;

(5) Service performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to the United States Immigration and Nationality Act, Sections 214(c) and 101(a) (15) (H);

(6) Domestic service in a private home, except as provided in paragraph A-3;

(7) Service performed by an individual in the employ of that individual's son, daughter or spouse and service performed by a child under 18 years of age in the employ of that child's father or mother, except for periods of such service for which unemployment insurance contributions are paid;

(8) Service performed by a student attending an elementary, secondary or postsecondary school while participating in a cooperative program of education and occupational training or on-the-job training that is part of the school curriculum;

(9) Service performed with respect to which unemployment compensation is payable under the federal Railroad Unemployment Insurance Act, 52 Stat. 1094 (1938);

(10) Service performed in the employ of any other state or any political subdivision thereof or any instrumentality of any one or more of the foregoing that is wholly owned by one or more states or political subdivisions and any services performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such a service, immune under the Constitution of the United States from the tax imposed by Section 3301 of the federal Internal Revenue Code, except as provided in paragraph A-1, subparagraph (1);

(11) Service performed in any calendar quarter in the employ of any organization exempt from income tax under the federal Internal Revenue Code, Section 501(a) other than an organization described in the federal Internal Revenue Code, Section 401(a), or under Section 521, if the remuneration for such service is less than $150;

(12) Service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(13) Service performed in the employ of an instrumentality wholly owned by a foreign government:

(a) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or an instrumentality thereof; and

(b) If the commissioner finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law and service performed as an intern in the employ of a hospital by an individual who has completed a 4-year course in a medical school chartered or approved pursuant to state law;

(15) Service performed by an individual for a person as a real estate broker, a real estate sales representative, an insurance agent or an insurance solicitor, if all such service performed by that individual for that person is performed for remuneration solely by way of commission;

(16) Service performed by an individual under 18 years of age in the delivery or distribution of newspapers or shopping news, except delivery or distribution to any point for subsequent delivery or distribution;

(17) Service performed in the employ of any organization that is excluded from the term "employment" as defined in the Federal Unemployment Tax Act solely by reason of 26 United States Code, Section 3306(c)(7) or (8) if:

(a) Service is performed in the employ of a church or convention or association of churches or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(b) Service is performed by a duly ordained, commissioned or licensed minister of a church in the exercise of that minister's ministry or by a member of a religious order in the exercise of duties required by that order;

(c) Prior to January 1, 1978, service is performed in the employ of a school primarily operated as an elementary, secondary or preparatory school for higher education that is not an institution of higher education;

(d) Service is performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental disability or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) Service is performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof by an individual receiving that work relief or work training;

(f) Service is performed in the employ of a hospital, as defined in subsection 26, by a patient of that hospital;

(g) Service is performed prior to January 1, 1978 for a hospital in a state prison or other state correctional institution by an inmate of that prison or correctional institution and after December 31, 1977 by an inmate of a custodial or penal institution;

(h) Service is performed in the employ of a school, college or university if that service is performed by a student who is enrolled and is regularly attending classes at such a school, college or university; or

(i) Prior to January 1, 1978, service is performed in the employ of a school that is not an institution of higher education and after December 31, 1977, service is performed in the employ of a governmental entity referred to in paragraph A-1, subparagraph (1) if that service is performed by an individual in the exercise of duties:

(i) As an elected official;

(ii) As a member of a legislative body or a member of the judiciary of a state or political subdivision of a state;

(iii) As a member of the State National Guard or Air National Guard;

(iv) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(v) In a position that, under or pursuant to the laws of this State, is designated as a major nontenured policy-making or advisory position or a policy-making or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week; or

(vi) As an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than $1,000;

(18) Service performed under a booth rental agreement or other rental agreement by:

(a) A hairdresser who holds a booth license and operates within another hairdressing establishment; or

(b) A tattoo artist if the service performed by the tattoo artist is not subject to federal unemployment tax;

(19) Service performed by a barber who holds a booth license and operates within another barbering establishment if operated under a booth rental agreement or other rental agreement;

(20) Service performed by a contract interviewer engaged in marketing research or public opinion interviewing when such interviewing is conducted in the field or over the telephone on premises not used or controlled by the person for whom such contract services are being provided;

(21) After December 31, 1981, service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life, unless those services would be included in the definition of "employment" for federal unemployment tax purposes under the Federal Unemployment Tax Act, 26 United States Code, Section 3306(c), as amended. Also included in this exemption are services performed in harvesting shellfish for depuration from designated areas as authorized by Title 12, section 6856;

(22) Service performed by a member or leader of a musical group, band or orchestra or an entertainer when the services are performed under terms of a contract entered into by the leader or an agent of the musical group, band, orchestra or entertainer with an employing unit for whom the services are being performed, if the leader or agent is not an employer by reason of subsection 9 or of section 1222, subsection 3;

(23) Service performed in the delivery or distribution of newspapers or magazines to the ultimate consumer by an individual who is compensated by receiving or retaining a commission or profit on the sale of the newspaper or magazine;

(24) Service performed by a homeworker in the knitted outerwear industry as those terms are defined, on September 19, 1985, in 29 Code of Federal Regulations, Part 530, Section 530.1;

(25) Service performed by a full-time student, as defined in subsection 30, in the employ of a youth camp licensed under Title 22, section 2495 if the full-time student performed services in the employ of the camp for less than 13 calendar weeks in the calendar year and the camp:

(a) Did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year; or

(b) Had average gross receipts for any 6 months in the preceding calendar year that were not more than 33 1/3% of its average gross receipts for the other 6 months in the preceding calendar year;

(26) Service performed by an individual as a home stitcher as long as that employment is not subject to federal unemployment tax;

(27) Service performed by a person licensed as a guide as required by Title 12, section 12853, as long as that employment is not subject to federal unemployment tax;

(28) Service performed by a direct seller as defined in 26 United States Code, Section 3508(b)(2). This subparagraph does not include a person selling major improvements or renovations to the structure of a home, business or property;

(29) Service performed by lessees of taxicabs, as long as that employment is not subject to federal unemployment tax. This subparagraph may not be construed to affect a determination regarding a lessee's status as an independent contractor for workers' compensation purposes;

(30) Service provided by a dance instructor to students of a dance studio when there is a contract between the instructor and the studio under which the instructor's services are not offered exclusively to the studio, the studio does not control the scheduling of the days and times of classes other than beginning and end dates, the instructor is paid by the class and not on an hourly or salary basis, the compensation rate is the result of negotiation between the instructor and the studio and the instructor is given the freedom to develop the curriculum;

(31) Service performed by participants enrolled in programs or projects under the national service laws including the federal National and Community Service Act of 1990, as amended, 42 United States Code, Section 12501 et seq. and the federal Domestic Volunteer Service Act, as amended, 42 United States Code, Section 4950 et seq.;

(32) Service of an author in furnishing text or other material to a publisher who:

(a) Does not control the author's work except to propose topics or to edit material submitted;

(b) Does not restrict the author from publishing elsewhere;

(c) Furnishes neither a place of employment nor equipment for the author's use;

(d) Does not direct or control the time devoted to the work; and

(e) Pays only for material that is accepted for publication.

This exception does not apply if the employment is subject to federal unemployment tax;

(33) Service provided by an owner-operator of a truck or truck tractor while it is leased to a motor carrier, as defined in 49 Code of Federal Regulations, Section 390.5 (2000), as long as that employment is not subject to federal unemployment tax; and

(34) Service performed by a professional investigator, as defined in Title 32, section 8103, subsection 5, as long as that employment is not subject to federal unemployment tax and the following requirements are met:

(a) There is a written contract between the professional investigator and the party requesting services;

(b) The professional investigator offering the services operates independently of the party requesting services, except for the time frame and quality of finished work as specified in the contract;

(c) Compensation for services is negotiated between the 2 parties and is paid for each service performed; and

(d) The party requesting services furnishes neither equipment nor the place of employment to the professional investigator. [2011, c. 691, Pt. A, §27 (RPR).]

G. Notwithstanding any other provisions of this section, "employment" shall include service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter. [1971, c. 538, §13 (AMD).]

[ 2011, c. 643, §6 (AMD); 2011, c. 643, §14 (AFF); 2011, c. 691, Pt. A, §§26, 27 (AMD) .]

**12**. **Employment office.** "Employment office" means a free public employment office, or branch thereof, operated by this State or the United States or maintained as a part of a state-controlled system of public employment offices.

**13**. **Employment Security Administration Fund.** "Employment Security Administration Fund" means the Employment Security Administration Fund from which administrative expenses under this chapter shall be paid.

**14**. **Fund.** "Fund" means the Unemployment Compensation Fund to which all contributions and payments in lieu of contributions required and from which all benefits provided under this chapter shall be paid.

[ 1973, c. 555, §9 (AMD) .]

**15**. **Insured work.** "Insured work" means employment by employers.

**16**. **State and United States.**

A. "State" includes the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands. [1977, c. 570, §17 (RPR).]

B. The term "United States" when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands. [1977, c. 570, §17 (RPR).]

C. [1979, c. 515, §4 (RP).]

[ 1979, c. 515, §4 (AMD) .]

**17**. **Unemployment, total and partial.** "Unemployment, total and partial," means:

A. An individual, including corporate officers, is considered "totally unemployed" in any week with respect to which wages are not payable to the individual and during which the individual does not perform services, except that remuneration payable or received as holiday pay is not considered wages for the purpose of this subsection and except that any amounts received from the Federal Government by members of the National Guard and organized reserve, including base pay and allowances, or any amounts received as a volunteer firefighter or a volunteer emergency medical services person, are not considered wages for the purpose of this subsection. [1991, c. 193, §2 (AMD).]

B. An individual, including corporate officers, is considered "partially unemployed" in any week of less than full-time work if the individual's wages payable from any source for such week are not $5 or more in excess of the weekly benefit amount the individual would be entitled to receive if totally unemployed and eligible, except that remuneration payable or received as holiday pay is not considered wages for the purpose of this subsection and except that any amounts received from the Federal Government by members of the National Guard and organized reserve, including base pay and allowances, or any amounts received as a volunteer firefighter, a volunteer emergency medical services person or as an elected member of the Legislature, are not considered wages for the purpose of this subsection. [1991, c. 548, Pt. D, §2 (AMD).]

C. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe. [1979, c. 515, §5 (AMD).]

[ 1991, c. 193, §2 (AMD); 1991, c. 548, Pt. D, §2 (AMD) .]

**18**. **Unpaid wages.** "Unpaid wages" means wages earned by an employee for employment from employers which remain unpaid because the assets of the employer for whom such employment was rendered are in the custody or control of an assignee for the benefit of creditors, receiver, trustee or any other fiduciary appointed by or under the control of a court of competent jurisdiction and shall, for all the purposes of this chapter, be deemed to be and shall be treated as though such wages had been paid to such employee during the calendar quarter within which such wages were earned.

[ 1973, c. 555, §11 (AMD) .]

**19**. **Wages.** "Wages" means all remuneration for personal services, including commissions, bonuses, severance or terminal pay, gratuities and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with regulations prescribed by the commission, except that:

A. For purposes of section 1221, the term "wages" does not include remuneration that exceeds the first $7,000 through December 31, 1999, and on and after January 1, 2000, the first $12,000 that is paid in a calendar year to an individual by an employer or the employer's predecessor for employment during

any calendar year, unless that remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. The wages of an individual for employment with an employer are subject to this exception whether earned in this State or any other state when the employer-employee relationship is between the same legal entities; [1999, c. 464, §1 (AMD).]

B. For purposes of section 1191, subsection 2, section 1192, subsection 5 and section 1221, the term "wages" shall not include:

(1) The amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally, or for his employees generally and their dependents, or for a class or classes of his employees, or for a class or classes of his employees and their dependents, on account of:

(a) Sickness or accident disability, but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workers' compensation law;

(b) Medical or hospitalization expenses in connection with sickness or accident disability; or

(c) Death;

(1-A) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer or a 3rd party to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for that employer;

(2) The payment by an employing unit, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Federal Insurance Contributions Act, as amended, with respect to service performed after July 26, 1940, with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor; or

(3) The amount of any payment, other than vacation or sick pay, to an individual after the month in which he attains the age of 62, if he did not perform services for the employing unit in the period for which such payment is made and is not expected to perform service in the future for the payment; [1997, c. 293, §3 (AMD).]

C. With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work includes wages paid for previously uncovered services. For the purposes of this paragraph, the term "previously uncovered services" means services:

(1) That were not employment as defined in subsection 11, and were not services covered pursuant to section 1222, at any time during the one-year period ending December 31, 1975; and

(2) That:

(a) Are agricultural labor, as defined in subsection 11, paragraph A-2 or domestic service as defined in subsection 11, paragraph A-3; or

(b) Are services performed by an employee of this State or a political subdivision thereof, or any of their instrumentalities as provided in subsection 11, paragraph A-1, subparagraph (1), or by an employee of a nonprofit educational institution that is not an institution of higher education, as provided in subsection 11, paragraph F, subparagraph (17), division (i);

except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services; [2011, c. 691, Pt. A, §28 (AMD).]

D. Nothing in this subsection may be construed to include as wages any payment which is not included as wages under the Federal Unemployment Tax Act, 26 United States Code, Section 3306(b)(5) and (r), as amended, as of January 1, 1985; and [1987, c. 338, §2 (AMD).]

E. Nothing in this subsection may be construed to exclude from wages any remuneration which is:

(1) Taxable under any federal law that imposes a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(2) Required to be covered under this chapter as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act. [1987, c. 338, §3 (NEW).]

[ 2011, c. 691, Pt. A, §28 (AMD) .]

**20**. **Week.** "Week" means such period or periods of 7 calendar days as the commission may by regulation prescribe. The commission may, by regulation, prescribe that a week shall be deemed to be "in," "within" or "during" a benefit year which includes any part of such week.

**21**. **Weekly benefit amount.** "Weekly benefit amount" means the amount of benefits an individual would be entitled to receive for one week of total unemployment.

**22**. **Regular employment.** "Regular employment" means work at the individual's customary trade, occupation, profession or business as opposed to temporary or odd job employment outside of such customary trade, occupation, profession or business.

**23**. **Misconduct.** "Misconduct" means a culpable breach of the employee's duties or obligations to the employer or a pattern of irresponsible behavior, which in either case manifests a disregard for a material interest of the employer. This definition relates only to an employee's entitlement to benefits and does not preclude an employer from discharging an employee for actions that are not included in this definition of misconduct. A finding that an employee has not engaged in misconduct for purposes of this chapter may not be used as evidence that the employer lacked justification for discharge.

A. The following acts or omissions are presumed to manifest a disregard for a material interest of the employer. If a culpable breach or a pattern of irresponsible behavior is shown, these actions or omissions constitute "misconduct" as defined in this subsection. This does not preclude other acts or omissions from being considered to manifest a disregard for a material interest of the employer. The acts or omissions included in the presumption are the following:

(1) Refusal, knowing failure or recurring neglect to perform reasonable and proper duties assigned by the employer;

(2) Unreasonable violation of rules that are reasonably imposed and communicated and equitably enforced;

(3) Unreasonable violation of rules that should be inferred to exist from common knowledge or from the nature of the employment;

(4) Failure to exercise due care for punctuality or attendance after warnings;

(5) Providing false information on material issues relating to the employee's eligibility to do the work or false information or dishonesty that may substantially jeopardize a material interest of the employer;

(6) Intoxication while on duty or when reporting to work or unauthorized use of alcohol while on duty;

(7) Using illegal drugs or being under the influence of such drugs while on duty or when reporting to work;

(8) Unauthorized sleeping while on duty;

(9) Insubordination or refusal without good cause to follow reasonable and proper instructions from the employer;

(10) Abusive or assaultive behavior while on duty, except as necessary for self-defense;

(11) Destruction or theft of things valuable to the employer or another employee;

(12) Substantially endangering the safety of the employee, coworkers, customers or members of the public while on duty;

(13) Conviction of a crime in connection with the employment or a crime that reflects adversely on the employee's qualifications to perform the work; or

(14) Absence for more than 2 work days due to incarceration for conviction of a crime. [1999, c. 464, §2 (NEW).]

B. "Misconduct" may not be found solely on:

(1) An isolated error in judgment or a failure to perform satisfactorily when the employee has made a good faith effort to perform the duties assigned;

(2) Absenteeism caused by illness of the employee or an immediate family member if the employee made reasonable efforts to give notice of the absence and to comply with the employer's notification rules and policies; or

(3) Actions taken by the employee that were necessary to protect the employee or an immediate family member from domestic violence if the employee made all reasonable efforts to preserve the employment. [1999, c. 464, §2 (NEW).]

[ 1999, c. 464, §2 (RPR) .]

**24**. **Insured worker.** An "insured worker" is an individual who has been paid wages of at least $250 for insured work in each of 2 different quarters in that individual's base period and has been paid total wages of at least $900 in the base period for insured work. For each individual establishing a benefit year on or after January 1, 1980, an "insured worker" is an individual who has been paid wages equal to or exceeding 2 times the annual average weekly wage for insured work in each of 2 different quarters in that individual's base period and has been paid total wages equal to or exceeding 6 times the annual average weekly wage in the base period for insured work. The annual average weekly wage amount to be used for purposes of this subsection must be that which is applicable at the time the individual files a request for determination of insured status.

[ 2015, c. 329, Pt. A, §15 (AMD) .]

**25**. **Institution of higher education.** "Institution of higher education" means an educational institution which:

A. Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate; [1971, c. 538, §16 (NEW).]

B. Is legally authorized to provide a program of education beyond high school; [1971, c. 538, §16 (NEW).]

C. Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; [1971, c. 538, §16 (NEW).]

D. Is a public or other nonprofit institution; and [1971, c. 538, §16 (NEW).]

E. Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this State are institutions of higher education for purposes of this subsection. [1971, c. 538, §16 (NEW).]

[ 1971, c. 538, §16 (NEW) .]

**26**. **Hospital.** "Hospital" means an institution which has been licensed, certified or approved by the Department of Health and Human Services as a hospital.

[ 1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

**27**. **Domestic service.** "Domestic service" includes all service for a person in the operation and maintenance of a private household, local college club or local chapter of a college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

[ 1977, c. 570, §20 (NEW) .]

**28**. **Governmental entity.** "Governmental entity" means the State of Maine, its instrumentalities, political subdivisions and school administrative units as represented by their elected or appointed governing bodies and includes, without limitation, city and town councils, boards of selectmen, boards of county commissioners, municipally owned and operated hospitals and administrative entities formed under Title 30-A, chapter 115. In the case of school administrative units, governing bodies include, without limitation, municipal school committees, school administrative district directors and community school district school committees. In the case of special purpose districts, governing bodies include, without limitation, boards of directors or trustees.

[ 2011, c. 678, Pt. C, §8 (AMD) .]

**29**. **Educational institution.** "Educational institution" means any school, including nursery schools and schools of higher education, which is licensed by the State and which provides an organized course of study designed to transfer knowledge, skills, attitudes or abilities under the guidance of a teacher.

[ 1979, c. 250, (NEW) .]

**30**. **Full-time student.** "Full-time student" for purposes of subsection 11, paragraph F, subparagraph (36), means an individual who:

A. Is enrolled as a full-time student at an educational institution; or [1987, c. 17, §2 (NEW).]

B. Is between academic years or terms if:

(1) The individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term; and

(2) There is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (1). [1987, c. 17, §2 (NEW).]

[ 1987, c. 17, §2 (NEW) .]

SECTION HISTORY
1965, c. 217, §1 (AMD). 1965, c. 381, §§1-6 (AMD). 1965, c. 457, §1 (AMD). 1967, c. 294, (AMD). 1969, c. 433, §66 (AMD). 1971, c. 538, §§1-17 (AMD). 1971, c. 586, (AMD). 1971, c. 598, §53 (AMD). 1973, c. 379, (AMD). 1973, c. 471, (AMD). 1973, c. 555, §§3-11 (AMD). 1973, c. 788, §121 (AMD). 1975, c. 57, (AMD). 1975, c. 116, §1 (AMD). 1975, c.

201, §§1,2 (AMD). 1975, c. 217, (AMD). 1975, c. 293, §4 (AMD). 1975, c. 407, §1 (AMD). 1975, c. 462, §1 (AMD). 1975, c. 691, §1 (AMD). 1975, c. 710, §1 (AMD). 1975, c. 770, §§119,120 (AMD). 1977, c. 483, (AMD). 1977, c. 570, §§1-20 (AMD). 1977, c. 585, §1 (AMD). 1977, c. 675, §2 (AMD). 1979, c. 94, (AMD). 1979, c. 127, §159 (AMD). 1979, c. 146, (AMD). 1979, c. 165, §1 (AMD). 1979, c. 250, (AMD). 1979, c. 306, (AMD). 1979, c. 515, §§1A-5A (AMD). 1979, c. 541, §§A175-A180 (AMD). 1979, c. 579, §§3,4,43,44 (AMD). 1979, c. 651, §§4,5,44,45, 47 (AMD). 1981, c. 168, §10 (AMD). 1981, c. 325, (AMD). 1981, c. 633, (AMD). 1981, c. 635, (AMD). 1983, c. 13, §§1,2 (AMD). 1983, c. 351, §3 (AMD). 1985, c. 74, (AMD). 1985, c. 302, (AMD). 1985, c. 348, §§1,2 (AMD). 1985, c. 591, §§1-3 (AMD). 1985, c. 814, §J1 (AMD). 1987, c. 17, §§1,2 (AMD). 1987, c. 338, §§1-3 (AMD). 1987, c. 402, §A157 (AMD). 1987, c. 570, §1 (AMD). 1987, c. 737, §§C71,C106 (AMD). 1987, c. 769, §A106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). RR 1991, c. 1, §35 (COR). 1991, c. 173, (AMD). 1991, c. 193, §§1,2 (AMD). 1991, c. 468, §2 (AMD). 1991, c. 548, §D2 (AMD). 1991, c. 560, §1 (AMD). 1991, c. 706, (AMD). 1991, c. 870, §1 (AMD). 1993, c. 22, §1 (AMD). RR 1995, c. 2, §62 (COR). 1995, c. 9, §1 (AMD). 1995, c. 204, §§1,2 (AMD). 1995, c. 560, §G10 (AMD). 1995, c. 587, §§1,2 (AMD). 1995, c. 612, §§1,2 (AMD). RR 1997, c. 1, §§23,24 (COR). 1997, c. 293, §§1-3 (AMD). 1997, c. 349, §§1,2 (AMD). 1997, c. 431, §§1,2 (AMD). 1997, c. 683, §A14 (AMD). 1999, c. 389, §§1-3 (AMD). 1999, c. 389, §4 (AFF). 1999, c. 464, §§1,2 (AMD). 1999, c. 555, §1 (AMD). RR 2001, c. 1, §40 (COR). 2001, c. 274, §§1,2 (AMD). 2003, c. 414, §B38 (AMD). 2003, c. 414, §D7 (AFF). 2003, c. 614, §9 (AFF). 2003, c. 689, §B6 (REV). 2005, c. 35, §1 (AMD). 2005, c. 119, §2 (AMD). 2007, c. 230, §1 (AMD). 2009, c. 211, Pt. B, §24 (AMD). 2009, c. 271, §1 (AMD). 2009, c. 637, §12 (AMD). 2011, c. 66, §1 (AMD). 2011, c. 70, §1 (AMD). 2011, c. 292, §1 (AMD). 2011, c. 643, §6 (AMD). 2011, c. 643, §14 (AFF). 2011, c. 678, Pt. C, §8 (AMD). 2011, c. 691, Pt. A, §§26-28 (AMD). 2015, c. 329, Pt. A, §15 (AMD).

## §1044. PROTECTION OF RIGHTS AND BENEFITS

**1**. **Waiver of rights void; penalty.** Any agreement by an individual to waive, release or commute his rights to benefits or any other rights under this chapter shall be void. Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ.

Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be guilty of a Class E crime.

[ 1979, c. 515, §6 (AMD) .]

**2**. **Limitation of fees; penalty.** No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the commission or its representatives or by any court or any officer thereof unless otherwise provided by Title 5, section 8001 et seq. Any individual claiming benefits in any proceeding before the commission or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the commission.

In the event a claimant has retained counsel for the purpose of prosecuting an appeal from a decision of the commission, and the final decision of such court results in a reversal, in whole or in part, of the decision appealed from, the fees for such service shall be paid by the commissioner from his administrative fund.

Any person who violates any provision of this subsection shall be guilty of a Class E crime.

[ 1979, c. 651, §6 (AMD) .]

**3**. **No assignment of benefits; exemptions.** Any assignment, pledge or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void. Such rights to benefits shall be exempt from levy, execution, attachment or any other remedy whatsoever provided for the collection of debt. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or his spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid.

SECTION HISTORY
1965, c. 294, (AMD). 1977, c. 694, §467 (AMD). 1979, c. 515, §§6-8 (AMD). 1979, c. 579, §5 (AMD). 1979, c. 651, §§6,47 (AMD).

## §1045. REPRESENTATION IN COURT

**1**. **Civil actions.** In any civil action to enforce this chapter the bureau and the State may be represented by any qualified attorney who is employed by the bureau and designated by it for this purpose or at the commissioner's request by the Attorney General.

[ 1983, c. 351, §4 (AMD) .]

**2**. **Criminal actions.** All criminal actions for violation of any provision of this chapter, or of any regulations issued pursuant thereto, shall be prosecuted by the Attorney General or district attorney.

[ 1981, c. 470, Pt. A, §143 (AMD) .]

SECTION HISTORY
1981, c. 470, §A143 (AMD). 1983, c. 351, §4 (AMD).

## §1046. NONLIABILITY

Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the Unemployment Compensation Fund, and neither the State, the bureau nor the commission shall be liable for any amount in excess of such sums. [1979, c. 651, §§ 7, 47 (AMD).]

SECTION HISTORY
1979, c. 579, §6 (AMD). 1979, c. 651, §§7,47 (AMD).

## §1047. INFORMATION PRIVILEGED

All information transmitted to the bureau, the commission or its duly authorized representatives pursuant to this chapter is absolutely privileged and may not be made the subject matter or basis in any action of slander or libel in any court in this State. The privileged nature of any such information may not limit or affect the use of that information in any prosecution or action to enforce Title 39-A, section 324. [1991, c. 885, Pt. E, §36 (AMD); 1991, c. 885, Pt. E, §47 (AFF).]

SECTION HISTORY

1979, c. 579, §7 (AMD). 1979, c. 651, §§8,47 (AMD). 1987, c. 77, §1 (AMD). 1991, c. 885, §E36 (AMD). 1991, c. 885, §E47 (AFF).

## §1048. SEPARABILITY OF PROVISIONS

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

## §1048-A. DISCLOSURE OF WAGE AND UNEMPLOYMENT COMPENSATION INFORMATION TO NATIONAL DIRECTORY OF NEW HIRES

Notwithstanding any other provision of law, the commissioner shall provide quarterly data, contained in the department's records of wages and unemployment compensation benefits paid to individuals who are reported to the Department of Health and Human Services pursuant to Title 19-A, section 2154, to the Department of Health and Human Services for transmission to the federal Secretary of Health and Human Services as required by Section 313(g)(2) of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105. The cost of complying with the requirements of this section must be paid for by the federal Department of Health and Human Services to the maximum extent permitted by law, with any remaining cost paid for by the Department of Health and Human Services. [1997, c. 537, §58 (NEW); 1997, c. 537, §62 (AFF); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1997, c. 537, §58 (NEW). 1997, c. 537, §62 (AFF). 2003, c. 689, §B6 (REV).

## §1049. SAVING CLAUSE

All the rights, privileges or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal this chapter at any time.

## §1050. CONSTITUTIONALITY

If at any time the provisions of this chapter requiring the payment of contributions and benefits have been held invalid under the Constitution of this State by the Supreme Judicial Court of this State or under the United States Constitution by the Supreme Court of the United States in such manner that any person or concern required to pay contributions under this chapter might secure a similar decision, or that the tax imposed by Title IX of the Social Security Act, as amended, or any other federal tax against which contributions under this chapter may be credited has been amended or repealed by Congress or has been held unconstitutional by the Supreme Court of the United States, with the result that no portion of the contributions required by this chapter may be credited against such federal tax, the Governor shall forthwith publicly so proclaim and upon the date of such proclamation the provisions of this chapter requiring the payment of contributions and benefits shall be suspended. The commissioner shall thereupon requisition from the Unemployment Trust Fund all moneys therein standing to his credit and shall direct the Treasurer of State to deposit such moneys, together with any other moneys in the fund, as a special fund in any banks or public depositories in this State in which general funds of the State may be deposited, and to hold such moneys for such disposition as the Legislature shall prescribe. The commissioner shall thereupon refund, as the Legislature shall prescribe, without interest and in accordance with regulations prescribed by the commission, to each person or concern by whom contributions have been paid, their pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the commissioner to pay for the costs of making such refunds. When the commissioner shall have executed the

duties prescribed and performed such other acts as are incidental to the termination of his duties under this chapter, the Governor shall by proclamation declare that this chapter shall cease to be operative. [1979, c. 651, §9 (AMD).]

SECTION HISTORY
1979, c. 579, §8 (AMD). 1979, c. 651, §§9,47 (AMD).

## §1051. PENALTIES

**1**. **False statement or representation.** A person is guilty of unemployment fraud if that person makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact:

A. To obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or of the Federal Government; [1979, c. 515, §9 (NEW).]

B. To prevent or reduce the payment of unemployment benefits to any individual; [1979, c. 515, §9 (NEW).]

C. To avoid becoming or remaining an employer under this chapter; or [1983, c. 118, (AMD).]

D. To avoid or reduce any contribution or other payment required from an employing unit under this chapter. [1979, c. 515, §9 (NEW).]

Each false statement or representation or failure to disclose a material fact constitutes a separate offense. Unemployment fraud is theft by deception under Title 17-A, section 354.

[ 2011, c. 645, §1 (AMD) .]

**2**. **Separate offense.** Any person who willfully fails or refuses to make any contributions or other payments, to furnish any reports required by this chapter or to produce or permit the inspection or copying of records as required is guilty of a Class D crime. Each failure or refusal shall constitute a separate offense. For purposes of this paragraph, "person" means an individual, corporation or partnership or an officer or employee of any corporation, including a dissolved corporation, or a member or employee of any partnership who was, at the time of the violation, under a duty to comply with this paragraph.

[ 1985, c. 348, §3 (AMD) .]

**3**. **Class E crime.** Any person who willfully violates any provision of this chapter or any regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, is guilty of a Class E crime.

[ 1983, c. 118, (AMD) .]

**4**. **Nondisclosure or misrepresentation to receive benefits.** Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact, and such nondisclosure or misrepresentation was known to him or ought to have been known by him to be fraudulent, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case, or while he was disqualified from receiving benefits, shall either be liable to have such sum deducted from any future benefits payable to him under this chapter or shall be liable to repay to the bureau for the Unemployment Compensation Fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in subsection 6.

[ 1979, c. 651, §44 (AMD) .]

**5**. **Refusal to repay erroneous payments; waiver of repayment.** If, after due notice, any person refuses to repay amounts erroneously paid to that person as unemployment benefits, the amounts due from that person are collectible in the manner provided in subsection 6 or in the discretion of the commission the amount erroneously paid to such person may be deducted from any future benefits payable to that person under this chapter; provided that there is no recovery of payments from any person who, in the judgment of at least 2 commission members, is without fault and where, in the judgment of the commission, such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience. No recovery may be attempted until the determination of an erroneous payment is final as to law and fact and the individual has been notified of the opportunity for a waiver under this subsection.

[ 1997, c. 293, §4 (AMD) .]

**6**. **Collection of erroneous payments or payments received by nondisclosure or misrepresentation.** Any amounts of benefit payments owed to the commissioner by any individual may be collected by any of the following methods.

A. The amount due may be collected by civil action in the name of the commissioner. [1983, c. 351, §5 (AMD).]

B. If any amount of benefit payments owed to the commissioner is not paid when the decision establishing or a decision upholding the establishment of the debt has become final as to law and fact under section 1194, and if the amount of benefit payments due was set forth on a notice duly mailed to the individual following the finality of the last decision, the amount due may be collected by warrant as follows.

(1) The commissioner may file in the office of the clerk of the Superior Court of Kennebec County a certificate addressed to the clerk specifying the amount of benefit payments required to be paid and the weeks involved, the name and address of the liable person as it appears on the records of the bureau, the facts whereby the amount has become final as to law and fact and requesting that a warrant be issued against the person for the amount required to be paid, and with costs, but without interest.

(2) When the certificate is filed, the clerk of the Superior Court shall issue a warrant in favor of the bureau against the person for the amount required to be paid and with costs. The clerk shall file the certificate in a separate docket entitled "Special Warrants for Unemployment Compensation Benefit Payments." These records are not to become a part of the extended record of the court.

(3) The warrant shall have the force and effect of an execution issued upon a judgment in a civil action, may be substantially the same as the form in section 1230, subsection 4, paragraph A, and shall specify the amount of benefit payments required to be paid and the weeks involved.

(4) Warrants shall be returnable within one year, and new warrants may be issued on any such certificate within 4 years from the return day of the last preceding warrant for sums remaining unsatisfied. [1979, c. 651, §§11, 12 (AMD).]

C. If the amount of benefit payments owed to the commissioner, as a result of nondisclosure or misrepresentation, when the decision establishing or a decision upholding the establishment of the debt has become final as to law and fact under section 1194 is over $100, and if the amount of benefit payments due was set forth on a notice duly mailed to the individual following the finality of the last decision and the individual has failed to make payments for 90 days, the amount due may be collected by an order to withhold and deliver as follows.

(1) The commissioner may serve on any person an order to withhold and deliver wages that are due or belong to the individual. Any person served with an order to withhold and deliver shall answer the order within 20 days of receipt of the order.

(2) Before implementation of the order to withhold, the individual must be served with a notice of intention to withhold weekly earnings.

(3) If the individual requests review by the commission of a notice of debt accrued or seeks relief in a court of proper jurisdiction, and if the Department of Labor receives the request or service of pleadings within 21 days after service of the notice of debt, it shall stay the collection action. The Department of Labor shall accept ordinary mail service of copies of all pleadings, which must be addressed to the Department of Labor representative whose name appears on the face of the notice of debt. Service upon the Department of Labor must be in addition to any other service required under the Maine Rules of Civil Procedure.

(4) Upon receipt of an order to withhold issued by the Department of Labor, the employer or other payor shall immediately begin withholding from the income of the responsible individual 10% of gross wages, except that the amount withheld may not exceed an amount by which the individual's disposable earnings are reduced to a weekly equivalent of 40 times the federal hourly minimum wage prescribed by 29 United States Code, Section 206(a)(1). Sums withheld must be remitted to the Department of Labor within 10 days of the date the individual is paid. Any person who honors an order to withhold issued under this section is discharged from any liability or obligation to the individual for the amount of the wages withheld.

(5) The withholding may be terminated with regard to a current obligation only upon notification by the commissioner.

(6) An employer may not discharge an employee because a lien or order to withhold and deliver has been served against the employee's earnings. An aggrieved employee may maintain a civil action against that employee's employer for violation of this subparagraph. [1997, c. 434, §1 (NEW).]

[ 1997, c. 434, §1 (AMD) .]

**7**. **Limitation on recovery.** Deduction from benefits that may be or may become payable to an individual as provided for in subsection 5 is limited to not more than 10% of the first $100 and 50% of any amount above $100 of any weekly benefit payment otherwise due the claimant.

[ 1999, c. 464, §3 (AMD) .]

**8**. **Setoff of debts against lottery winnings.** Lottery winnings may be offset for benefit payments owed to the commissioner in accordance with this subsection.

A. The commissioner shall periodically notify the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, referred to in this paragraph as the "bureau," of all persons who owe the Department of Labor an unemployment compensation debt that has been liquidated by judicial or administrative action. Before paying any state lottery winnings that must be paid directly by the bureau, the bureau shall determine whether the lottery winner is on the list of persons who owe to the State an unemployment compensation debt that has been liquidated by judicial or administrative action. If the winner is on a list of persons who owe unemployment compensation debts, the bureau shall suspend payment of winnings and notify the winner of its intention to offset the winner's unemployment compensation debt against the winnings. The bureau shall notify the winner of the winner's right to appeal to the Commissioner of Labor pursuant to Title 5, chapter 375. The winner must appeal in writing within 15 days of receipt of that notice. The hearing is limited to the questions of whether the debt is liquidated and whether postliquidation events have affected the winner's liability. The decision of the Department of Labor as to the existence of a liquidated debt constitutes final agency action. If, within 90 days of the notice of intended setoff to the winner, the Department of Labor certifies to the bureau that the winner did not make a timely request for hearing or that a hearing was held and the debt was upheld, the bureau shall offset the liquidated debt against the winnings due to the winner. Any remaining winnings are paid to the winner. If the bureau does not hear from the Department of Labor within 90 days of the notice of intended setoff to the winner, the bureau shall release all winnings to the winner. [1997, c. 434, §2 (NEW).]

B. The commissioner shall periodically notify the Tri-state Lotto Commission of all persons who owe the Department of Labor an unemployment compensation debt that has been liquidated by judicial or administrative action. [1997, c. 434, §2 (NEW).]

[ 1997, c. 434, §2 (NEW) .]

**9**. **Interest on overpayments.** Benefit payments owed to the commissioner bear interest at the rate of 1.0% per month or per fraction of a month. Except as provided in this subsection, interest accrues on any balance that remains unpaid one year after the first of the month following the date the determination establishing the benefit overpayment becomes final until payment plus accrued interest is received by the bureau. If the benefit overpayment was established in a determination rendered under section 1193, subsection 6, interest accrues from the first of the month following the date the determination establishing the benefit overpayment becomes final until payment plus accrued interest is received by the bureau.

[ 1999, c. 464, §4 (NEW) .]

**10**. **Application of benefit repayments.** Amounts received through any means to repay benefit payments owed to the commissioner must be applied first to any outstanding penalties, 2nd to any outstanding interest and 3rd to any benefit payments owed to the commissioner.

[ 1999, c. 464, §4 (NEW) .]

SECTION HISTORY
1971, c. 419, (AMD). 1975, c. 462, §2 (AMD). 1975, c. 710, §3 (AMD). 1977, c. 460, §§1-3 (AMD). 1979, c. 515, §9 (AMD). 1979, c. 579, §§9-11,43 (AMD). 1979, c. 651, §§10-12,44, 47 (AMD). 1981, c. 284, (AMD). 1981, c. 327, (AMD). 1983, c. 118, (AMD). 1983, c. 305, §1 (AMD). 1983, c. 351, §5 (AMD). 1985, c. 348, §3 (AMD). 1997, c. 293, §4 (AMD). 1997, c. 434, §§1,2 (AMD). 1999, c. 464, §§3,4 (AMD). 2011, c. 645, §1 (AMD).

## Subchapter 2: ADMINISTRATION

## §1081. ADMINISTRATIVE ORGANIZATION

**1**. **Commission.** The Maine Unemployment Insurance Commission shall consist of 3 members, one of whom shall be a representative of labor, one of whom shall be a representative of employers and one of whom shall be a representative of the general public who shall be impartial and an attorney admitted to the practice of law in the State and shall be the chairman of the commission. Except as provided in this subsection, the 3 members and their successors shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over labor and to confirmation by the Senate, to hold office for a term of 6 years or until a successor has been duly appointed and confirmed, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed shall be appointed for the remainder of the term. During a term of membership on the commission, a member shall not engage in any other business, vocation or employment, nor serve as an officer or committee member of any political organization.

[ 1987, c. 641, §1 (AMD) .]

**2**. **Salaries.** The members of the commission shall receive a fixed weekly salary in accordance with Title 2, section 6, and shall be paid from the Employment Security Administration Fund.

[ 1981, c. 470, Pt. A, §144 (AMD) .]

**3**. **Quorum.** Any 2 members of the commission shall constitute a quorum. Whenever the commission hears any case under this chapter and Title 36, chapter 831, the chairman shall act alone in the absence or disqualification of any other member, provided that in the event of illness or extended absence on the part of the chairman or in the event of a vacancy in that position, the remaining members may act on appeals, conduct hearings, and render decisions, provided both members agree. Except as otherwise provided, no vacancy may impair the right of the remaining members to exercise all of the powers of the commission. Any action, decision, order, rule or recommendation which is required by law to be made by the Maine Unemployment Insurance Commission shall not be made until the commission has held a meeting in the regular course of its business for which all members have been provided with reasonable notice of the meeting and its agenda.

[ 1987, c. 641, §2 (AMD) .]

SECTION HISTORY
1965, c. 328, (AMD). 1967, c. 476, §21 (AMD). 1967, c. 494, §§21-A (AMD). 1969, c. 504, §44 (AMD). 1971, c. 620, §§2-5 (AMD). 1975, c. 771, §285 (AMD). 1977, c. 675, §§3-5 (AMD). 1981, c. 286, §1 (AMD). 1981, c. 470, §A144 (AMD). 1983, c. 351, §§6,7 (AMD). 1987, c. 641, §§1,2 (AMD).

## §1082. POWERS AND DUTIES

**1**. **Powers and duties of the commissioner.** Except as otherwise provided, it is the duty of the Commissioner of Labor to administer this chapter, through an organization to be known as the Bureau of Unemployment Compensation. The commissioner may employ persons, make expenditures, require reports, make investigations and take other actions the commissioner determines necessary or suitable to that end. The commissioner is responsible and possesses the necessary authority for the operation and management of the Bureau of Unemployment Compensation. The commissioner shall determine methods of operational procedures in accordance with the provisions of this chapter. The commissioner may adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, to achieve this purpose, except rules pertaining to unemployment insurance as provided in subsection 2. The commissioner may adopt rules with respect to a self-employment assistance program as provided in section 1197. The commissioner shall determine methods of operational procedures in accordance with the provisions of this chapter and by the Maine Administrative Procedure Act, Title 5, chapter 375. The commissioner shall make recommendations for amendments to this chapter that the commissioner determines proper. When the commissioner believes that a change in contribution or benefit rates is necessary to protect the solvency of the fund, the commissioner shall promptly inform the Governor and the Legislature and make recommendations with respect to the change in rates.

[ 1995, c. 560, Pt. G, §11 (AMD) .]

**2**. **Powers and duties.** In addition to other powers and duties provided in this chapter, the commission, by majority vote and with the advice of the commissioner, may adopt or rescind rules with respect to unemployment insurance in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. The commission may require reports, make investigations and undertake other activities necessary to carry out the duties of the commission. Each member of the commission is entitled to access to any information, memoranda, reports or statistical data that is in the possession of or that has been prepared by a division of the Department of Labor and that relates to the administration of this chapter.

[ 2003, c. 452, Pt. O, §3 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**3**. **Publication.** The Commissioner of Labor shall cause to be printed for distribution to the public the text of this chapter, the commission's regulations, the commissioner's annual reports to the Governor and any other material the commissioner or the commission considers relevant and suitable, and shall furnish the same to any person upon application.

The commissioner shall cause to be printed a comprehensive set of Department of Labor internal rules, policies, regulations, memoranda, instructions and other forms used in determining eligibility, payment of benefits and similar issues. The compilation must be indexed conveniently to facilitate its use by the public and easily accessible to the public.

The commissioner shall annually publish data on the content and usage of the fund for not less than the preceding 10 years, including financing, benefit costs, experience rating and contribution rates as applicable. Legislative changes enacted after December 31, 2010 that have an impact on the content or usage of the fund must be disclosed separately for not less than the 5 years after enactment of the change.

[ 2011, c. 212, §1 (AMD) .]

**4**. **Personnel.** Subject to other provisions of this chapter, the Commissioner of Labor is authorized to appoint and prescribe the duties and powers of, and fix the compensation of, such officers, accountants, attorneys, experts and other persons as may be necessary in the performance of his duties, subject to the Civil Service Law. The commissioner may delegate to any such person so appointed such power and authority as is reasonable and proper for the effective administration of this chapter, and may in his discretion bond any person handling moneys or signing checks under this chapter. On request of the commissioner, the Attorney General shall represent the department, the commission and the State in any court action relating to this chapter or to its administration and enforcement. Special counsel may be retained by the commissioner in accordance with Title 5, section 196, whose service and expenses shall be paid from the funds provided for the administration of this chapter. The commissioner shall not employ or pay any person who is an officer or committee member of any political party organization.

[ 1985, c. 785, Pt. B, §120 (AMD) .]

**4-A**. **Division of Administrative Hearings.** There is established within the Department of Labor the Division of Administrative Hearings to hear and decide appeals from decisions of the deputy as provided by this chapter and any other appeals as the commission or commissioner may require.

A. The division shall be under the direction of the chief administrative hearing officer appointed by the commissioner and subject to the Civil Service Law. The chief administrative hearing officer must be an attorney admitted to practice law in the State. [1987, c. 641, §3 (NEW).]

B. The chief administrative hearing officer shall administer the office, supervise and assign cases to the administrative hearing officers, and preside at hearings as necessary. [1987, c. 641, §3 (NEW).]

C. Administrative hearing officers shall preside at appeal proceedings. These administrative hearing officers shall be under the direction of the chief administrative hearing officer and hired subject to the Civil Service Law. [1987, c. 641, §3 (NEW).]

[ 1987, c. 641, §3 (NEW) .]

**5**. **Advisory council.**

[ 2001, c. 352, §13 (RP) .]

**6**. **Employment stabilization.** The Commissioner of Labor may take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the State, of reserves for public works to be used

in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

[ 2001, c. 352, §14 (AMD) .]

**7**. **Records and reports.** Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. These records must be open to inspection and be subject to being copied by the commissioner or the commissioner's authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, that the commissioner considers necessary for the effective administration of this chapter. Information thus obtained or obtained from any individual pursuant to the administration of this chapter, except to the extent necessary for proper presentation of a claim, must be held confidential and may not be published or opened to public inspection, other than to public employees in the performance of their public duties or to any agent of an agency that is under contract with a state or local child-support agency, or to any agent of an agency that is under contract or subcontract with the state employment and job training agency, pursuant to safeguards established by the commissioner, in any manner revealing the individual's or employing unit's identity, but the department shall, upon request, provide to any party to an adjudicatory proceeding information from the records relating to the proceeding. Final decisions of adjudicatory proceedings are available to the public after the names and addresses of claimants and employers are deleted from the decisions. Records, with any necessary authentication of those records, required in the prosecution of any criminal action brought by another state for misrepresentation to obtain benefits under the law of this State must be made available to the agency administering the employment security law of any such state for the purpose of such prosecution.

A. A person who violates this subsection commits a Class E crime. [2003, c. 452, Pt. O, §4 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. An agent of an agency that is under contract with a state or local child-support agency, or an agent of an agency that is under contract or subcontract with the state employment and job training agency who discloses any information that is confidential pursuant to this subsection, other than disclosure authorized by this subsection, commits a Class E crime. [2003, c. 452, Pt. O, §4 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[ 2003, c. 452, Pt. O, §4 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**8**. **Oaths and witnesses.** In the discharge of the duties imposed by this chapter, the commissioner, the commission, the chief administrative hearing officer and any duly authorized representative of them shall have power to administer oaths and affirmations, take depositions, certify official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter. Oaths and affirmations required by reason of duties performed pursuant to this chapter may be administered by any of such persons as may be designated for the purpose by the commissioner. In the discharge of the duties imposed by this chapter, the commissioner, the commission, the chief administrative hearing officer or any duly authorized representative of them, when the interests of any interested party demand, may issue commissions to take depositions to any unemployment compensation or employment security official empowered to take such depositions under this chapter or the laws of any other state, for either of the following causes:

A. When the deponent resides out of, or is absent from, the State;

B. When the deponent is bound to sea or is about to go out of the State; or

C. When the deponent is so aged, infirm or sick as to be unable to attend at the place of hearing.

Such depositions shall be taken by written interrogatories to be compiled by the commission or the Division of Administrative Hearings, and the adverse party shall be afforded an opportunity to refute such testimony before a determination is made. The deponent shall be sworn and the deposition shall be signed and sworn to by the deponent before admissible as testimony at a hearing before the Division of Administrative Hearings or the commission.

Subpoenas shall be issued pursuant to Title 5, section 9060.

[ 1987, c. 641, §4 (AMD) .]

**9**. **Subpoenas.**

[ 1977, c. 694, §471 (RP) .]

**9-A**. **Refusal to appear.** A person who without just cause fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda and other records, if it is in that person's power to do so, in obedience to a subpoena of the commissioner, the commission, the Division of Administrative Hearings or the duly authorized representative of any of them commits a Class E crime. This crime is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. If a person refuses to obey a subpoena duly issued by the commissioner, the commission, the Division of Administrative Hearings or the duly authorized representative of any of them, any court of this State within the jurisdiction of which the person resides or transacts business has jurisdiction to issue to that person an order requiring the person to appear and produce evidence or testimony, and any failure to obey that order may be punished by the court as contempt of court.

[ 2003, c. 452, Pt. O, §5 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**10**. **Protection against self-incrimination.** No person may be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records before the commission, the chief administrative hearing officer or duly authorized representative of either of them, or in obedience to the subpoena of the commission, the chief administrative hearing officer or the duly authorized representative of either of them in any cause or proceeding before the commission, the chief administrative hearing officer or duly authorized representative of either of them, on the ground that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate that person or subject that person to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which that person is compelled, after having claimed privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

[ 1987, c. 641, §6 (AMD) .]

**11**. **State-federal cooperation.** In the administration of this chapter, the commissioner shall cooperate to the fullest extent consistent with this chapter with the Department of Labor; shall make such reports, in such form and containing such information as the Secretary of Labor may from time to time require, and shall comply with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations of the Secretary of Labor governing the expenditure of such sums as may be allotted and paid to this State under Title III of the Social Security Act for the purpose of assisting in the administration of this chapter. Upon request therefor, the commissioner shall furnish to any agency of the United States, charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter. The commissioner may make the state's records relating to the administration of this chapter available to the Railroad Retirement Board and may furnish the Railroad Retirement Board, at the expense of such board,

such copies thereof as the Railroad Retirement Board deems necessary for its purposes. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law or employment security law.

[ 1977, c. 675, §10 (AMD) .]

**12**. **Reciprocal benefit arrangements.** The commissioner shall participate in any arrangements with the appropriate agencies of other states or the Federal Government for the payment of benefits on the basis of combining an individual's wages and employment covered under this chapter and his wages and employment covered under the unemployment compensation or employment security laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under 2 or more state unemployment compensation laws, and avoiding the duplicate use of wages and employment by reason of such combining. The commissioner shall reimburse such state or federal agency for such benefits as may be paid by that agency upon the basis of wages received in employment subject to this chapter or shall receive from such state or federal agency such amounts as may be paid from the fund upon the basis of wages received in employment subject to the laws of such state or of the Federal Government.

The commissioner is authorized to enter into reciprocal agreements with the appropriate agencies of other states or the Federal Government adjusting the collection and payment of contributions by employers with respect to services of individuals not performed wholly within the jurisdiction of this State whereby such services may be agreed upon to be considered for all purposes, if the commissioner so desires, as wholly within, or wholly without, the jurisdiction of this State, notwithstanding any provisions of section 1043, subsection 11.

The commissioner is authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this chapter as he deems necessary or appropriate to facilitate the administration of any unemployment compensation, employment security or public employment service law, and in like manner to accept and utilize information, services and facilities made available to this State by any agency charged with the administration of any such other unemployment compensation, employment security or public employment service law. To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment compensation or employment security laws of any foreign government may be utilized for the taking of claims and the payment of benefits under this chapter, or under a similar law of such government. On request of any agency which administers an employment security law of another state, and which has found in accordance with such law that a claimant is liable to repay benefits received under such law by reason of having knowingly made a false statement or misrepresentation of a material fact with respect to a claim taken in this State as an agent for such agency, the commissioner may collect from such claimant the amount of such benefits to be refunded to such agency.

In any case in which under this subsection a claimant is liable to repay any amount to the agency of another state, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency.

[ 1983, c. 351, §13 (AMD) .]

**13**. **Filing payroll reports; penalty.** The commission may prescribe rules for the filing of payroll reports for the employing units in the State. Each employing unit shall submit a quarterly payroll report by electronic submission or on forms prescribed by the bureau. These quarterly reports are due in the office of the bureau, or of any duly constituted agent of the bureau, on or before the last day of the month following the

close of the calendar quarter for which the reports relate. The failure on the part of any employing unit to file the payroll reports within this time frame renders the employing unit liable for a penalty of $25 or 10% of the tax due, whichever is greater.

In the case of executive, administrative and professional employees, and outside sales representatives, as defined in Part 541 of the Rules and Regulations promulgated under the Fair Labor Standards Act of 1938, as amended as of June 30, 1971, the commissioner, upon the request of an employer of those individuals, may approve an alternative method for obtaining from that employer necessary wage information relative to those employees.

[ 2015, c. 39, §1 (AMD) .]

**13-A**. **Certificate of records of payroll reports as evidence.** Notwithstanding any other provision of law or rule of evidence, for purposes of any prosecution or action to enforce Title 39-A, section 324, a certificate signed by the Director of Unemployment Compensation or a representative of the commissioner duly authorized by the commissioner stating what the payroll report records show must be received in any court in this State as prima facie evidence of any fact stated in the certificate or the records attached to the certificate.

[ 1991, c. 885, Pt. E, §37 (AMD); 1991, c. 885, Pt. E, §47 (AFF) .]

**14**. **Determination of employer or employment; appeal.**

A. The Director of Unemployment Compensation or a representative of the commissioner duly authorized by the commissioner to do so shall determine whether an employing unit is an employer and whether services performed for or in connection with the business of the employing unit constitute employment, and shall give written notice of the determination to the employing unit. Unless the employing unit, within 30 calendar days after notification was mailed to its last known address, files an appeal from that determination, the determination is final. [1995, c. 657, §2 (AMD); 1995, c. 657, §10 (AFF).]

B. After a determination has been made under paragraph A, the Director of Unemployment Compensation or a representative of the commissioner may within one year reconsider the determination in the light of additional evidence and make a redetermination and shall give written notice of the redetermination to the employing unit. Unless the employing unit, within 30 calendar days after notification was mailed to its last known address, files an appeal from that redetermination, the redetermination is final. [1995, c. 657, §2 (AMD); 1995, c. 657, §10 (AFF).]

C. Commission review. The commission may on its own motion within 15 days of mailing any determination or redetermination made under paragraph A or paragraph B either affirm, modify or set aside any such determination or redetermination on the basis of evidence previously submitted in such case or commence action to hold a hearing in accordance with the requirements of paragraph D to obtain additional evidence. The commission's decision shall be mailed to the last known address of the employing unit. [1981, c. 470, Pt. A, §145 (AMD).]

D. Appeal. Upon appeal of such determination or redetermination, the commission shall after affording the employing unit a reasonable opportunity for a fair hearing, make findings of fact and render its decision which may affirm, modify, or reverse the determination of the Director of Unemployment Compensation or its representative. Such hearings shall be conducted in accordance with Title 5, section 9051 et seq. The commission shall notify the parties to the proceeding of its findings of fact and decision, and such decision shall be subject to appeal pursuant to Title 5, section 11001 et seq. In the absence of appeal therefrom, the determination of the commission, together with the record of the proceeding under this subsection, shall be admissible in any subsequent material proceeding under this chapter, and if supported by evidence, and in the absence of fraud, shall be conclusive, except as to errors of law, upon any employing unit which was a party to the proceeding under this subsection. [1977, c. 694, §472 (AMD).]

E. [1977, c. 694, §473 (RP).]

[ 1995, c. 657, §2 (AMD); 1995, c. 657, §10 (AFF) .]

SECTION HISTORY
1965, c. 381, §7 (AMD). 1967, c. 398, §1 (AMD). 1967, c. 519, (AMD). 1971, c. 538, §§18-20 (AMD). 1971, c. 620, §§6-10 (AMD). 1975, c. 90, (AMD). 1975, c. 771, §286 (AMD). 1977, c. 460, §4 (AMD). 1977, c. 675, §§6-11 (AMD). 1977, c. 694, §§468-473 (AMD). 1977, c. 696, §§373,375 (AMD). 1979, c. 127, §§160,161 (AMD). 1979, c. 515, §§9A-11 (AMD). 1979, c. 541, §A181 (AMD). 1979, c. 579, §§13-17,44 (AMD). 1979, c. 651, §§14-18,45, 47 (AMD). 1981, c. 168, §§11-16 (AMD). 1981, c. 470, §A145 (AMD). 1983, c. 115, §1 (AMD). 1983, c. 351, §§8-14 (AMD). 1983, c. 489, §14 (AMD). 1983, c. 812, §164 (AMD). 1983, c. 816, §A21 (AMD). 1985, c. 348, §4 (AMD). 1985, c. 537, (AMD). 1985, c. 785, §B120 (AMD). 1987, c. 77, §2 (AMD). 1987, c. 338, §4 (AMD). 1987, c. 641, §§3-6 (AMD). 1989, c. 483, §A49 (AMD). 1989, c. 503, §B111 (AMD). 1989, c. 878, §A72 (AMD). 1991, c. 885, §E37 (AMD). 1991, c. 885, §E47 (AFF). 1993, c. 312, §1 (AMD). 1993, c. 710, §1 (AMD). 1995, c. 560, §G11 (AMD). 1995, c. 657, §§1,2 (AMD). 1995, c. 657, §10 (AFF). 1997, c. 687, §1 (AMD). 2001, c. 352, §§13,14 (AMD). 2003, c. 452, §§O3-5 (AMD). 2003, c. 452, §X2 (AFF). 2011, c. 212, §1 (AMD). 2015, c. 39, §1 (AMD).

## §1083. EMPLOYMENT SERVICE

**1**. **State employment service.** The commissioner shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are within the purview of the "Wagner-Peyser Act." It shall be the duty of the commissioner to cooperate with any official or agency of the United States having powers or duties under the said Act of Congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said Act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said Act of Congress, as amended, are accepted by this State, in conformity with section 4 of said Act, and this State will observe and comply with the requirements thereof. The Department of Labor is designated and constituted the agency of this State for the purpose of this Act. The commissioner may cooperate with or enter into agreements with the Railroad Retirement Board with respect to the establishment, maintenance and use of free employment service facilities.

[ 1981, c. 168, §17 (AMD) .]

**2**. **Financing.** All funds received by this State under the federal Wagner-Peyser Act, as amended, must be paid into an employment services fund and the funds made available to the commissioner to be expended as provided by this section and by that Act of Congress. For the purpose of establishing and maintaining free public employment offices, the commissioner is authorized to enter into agreements with the Railroad Retirement Board, or any other agency of the United States charged with the administration of an unemployment compensation law or employment security law, with any political subdivision of this State or with any private, nonprofit organization, and as a part of any such agreement the commissioner may accept funds, services or quarters as a contribution to an employment services fund.

[ 2013, c. 467, §3 (AMD) .]

**3**. **Services to students.** The commissioner shall include in each annual plan of service a program for service to students in Maine public secondary schools. Such plan shall give priority of service to all public high school students, particularly those who do not have definite post-graduation plans for employment or

further education. The service may provide to such students testing where appropriate, counseling concerning their ability and the availability of jobs, and any other services of the Employment Service which will assist them to obtain and retain suitable employment or further education, including services of the Job Bank.

Nothing in this subsection shall be construed as requiring the commissioner to submit an annual plan of service which would be out of compliance with Federal statutes or regulations governing this plan, or the programs or budgets conducted thereunder.

[ 1975, c. 688, (NEW) .]

SECTION HISTORY
1975, c. 688, (AMD). 1977, c. 675, §§12,13 (AMD). 1981, c. 168, §17 (AMD). 2013, c. 467, §3 (AMD).

## §1084. MUNICIPAL EMPLOYMENT SERVICE

**1**. **Authorization.** The legislative body of a municipality may authorize its municipal officers or their designee to enter into an agreement, not financed by the State, with the commissioner for the purpose of providing job services or job service facilities, or both.

[ 1995, c. 560, Pt. G, §12 (AMD) .]

**2**. **Liability of the State.** Notwithstanding any other provision of law or agreement to the contrary, for the purposes of this section, the municipality shall be considered an agent of the State and the municipal officials and employees shall be considered to be acting on behalf of the State in its official capacity. The State shall indemnify, hold harmless and, with the consent of the municipality or its officials or employees, defend the municipality and its officials and employees against any claim which arises out of an act or omission occuring within the course or scope of employment for purposes of performing the duties within the purview of this section. If the defense of the municipality or its officials or employees creates a conflict of interest between the State and the municipality, official or employee, the State need not assume the defense; however, the State shall be liable for reasonable attorney's fees and court costs of the municipality, official or employee.

This subsection shall not apply if the municipality, official or employee settles the claim without the consent of the State, or if the municipality, official or employee does not notify the State within 30 days after receiving actual written notice of the claim against him or within 15 days after the service of the summons and complaint upon him and if the State is prejudiced thereby.

[ 1981, c. 648, (NEW) .]

SECTION HISTORY
1981, c. 648, (NEW). 1995, c. 560, §G12 (AMD).

# Subchapter 3: EMPLOYMENT SECURITY ADMINISTRATION FUND

## §1111. USE OF FUND

The special fund in the State Treasury known as the Unemployment Compensation Administration Fund, as heretofore created, shall hereafter be known as the Employment Security Administration Fund. All moneys which are deposited or paid into this fund are appropriated and made available to the commissioner. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this chapter, and for no other purpose whatsoever. The fund shall consist of all moneys appropriated by this State, and all moneys received from the United States of America, or any agency thereof, including the Social Security Board, Railroad Retirement Board and the United States Employment Service, or from any other source, for such purpose. Moneys received from the Railroad Retirement Board as compensation for services or facilities supplied to said board shall be paid into this fund on the same basis as expenditures are

made for such services or facilities from such fund. All moneys in this fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. Any balances in this fund shall not lapse at any time, but shall be continuously available to the commissioner for expenditure consistent with this chapter. [1979, c. 651, §§ 45, 47 (AMD).]

SECTION HISTORY
1979, c. 579, §44 (AMD). 1979, c. 651, §§45,47 (AMD).

## §1112. REIMBURSEMENT OF FUND

If any moneys received in the Employment Security Administration Fund after June 30, 1941 are found by the Secretary of Labor because of any action or contingency to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of this chapter, it is the policy of this State that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this State to the Employment Security Administration Fund for expenditure as provided in section 1111. Upon receipt of notice of such a finding by the Secretary of Labor, the commissioner shall promptly report the amount required for such replacement to the Governor, and the Governor shall at the earliest opportunity submit to the Legislature a request for the appropriation of such amount. This section shall not be construed to relieve this State of its obligation with respect to funds received prior to July 1, 1941, pursuant to Title III of the Social Security Act. [1979, c. 651, §§ 45, 47 (AMD).]

SECTION HISTORY
1979, c. 579, §44 (AMD). 1979, c. 651, §§45,47 (AMD).

# Subchapter 4: UNEMPLOYMENT COMPENSATION FUND

## §1141. CONTENTS OF FUND

The Unemployment Compensation Fund, as heretofore created, shall be a special fund, separate and apart from all public moneys or funds of this State, and shall be administered by the commissioner exclusively for the purposes of this chapter. All moneys in the fund shall be mingled and undivided. This fund shall consist of: [1979, c. 651, §19 (AMD).]

**1**. **Contributions.** All contributions and payments in lieu of contributions collected under this chapter;

[ 1973, c. 555, §12 (AMD) .]

**2**. **Interest.** Interest earned upon any moneys in the fund;

**3**. **Property or securities.** Any property or securities acquired through the use of moneys belonging to the fund;

**4**. **Earnings.** All earnings of such property or securities;

**5**. **Moneys.** All other moneys received for the fund under any Act of Congress or from any other source.

SECTION HISTORY
1973, c. 555, §12 (AMD). 1977, c. 675, §14 (AMD). 1979, c. 579, §18 (AMD). 1979, c. 651, §§19,47 (AMD).

# Subchapter 5: MANAGEMENT OF FUNDS

## §1161. ACCOUNTS AND DEPOSIT

The Treasurer of State is the ex officio treasurer and custodian of the Unemployment Compensation Fund and shall administer the fund in accordance with the directions of the commissioner. The Treasurer of State shall maintain within the fund 4 separate accounts: [2003, c. 164, §1 (AMD).]

**1**. **Clearing account.** A clearing account for all money payable to the trust fund account that is not deposited into the tax deposit account;

[ 2015, c. 39, §2 (AMD) .]

**2**. **Trust fund account.** An unemployment trust fund account;

[ 2003, c. 164, §1 (AMD) .]

**3**. **Benefit account.** A benefit account; and

[ 2003, c. 164, §1 (AMD) .]

**4**. **Tax deposit account.** A clearing account for that portion of unemployment insurance contributions payable to the trust fund account from the tax deposit account.

[ 2015, c. 39, §2 (AMD) .]

All money payable to the fund, upon receipt by the commissioner, must be forwarded to the Treasurer of State, who shall immediately deposit it in the clearing account or the tax deposit account. Refunds payable pursuant to section 1043, subsection 11, paragraph F, subparagraph (2) or section 1225 may be paid from the clearing account, the tax deposit account or the benefit account upon warrants prepared by the commissioner and signed by the State Controller. After clearance, all other money in the clearing account and all of the unemployment compensation money in the tax deposit account must be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the Unemployment Trust Fund, established and maintained pursuant to Section 904 of the Social Security Act, as amended, any provisions of law in this State relating to the deposit, administration, release or disbursement of money in the possession or custody of this State to the contrary notwithstanding. The benefit account must consist of all money requisitioned from this State's account in the Unemployment Trust Fund. [2015, c. 39, §2 (AMD).]

Except as otherwise provided, money in the clearing, tax deposit and benefit accounts may be deposited by the Treasurer of State, under the direction of the commissioner, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium may be paid out of the fund. [2015, c. 39, §2 (AMD).]

The Governor is authorized to apply for advances to the account of this State in the Unemployment Trust Fund in accordance with the provisions of Title XII of the Social Security Act, 42 United States Code, Section 1321, as amended, or under any other Act of Congress extending such authority, in order to secure to this State and its citizens the advantages available under the provisions of Title XII of the Social Security Act. [2003, c. 164, §1 (AMD).]

SECTION HISTORY
1975, c. 462, §3 (AMD). 1975, c. 770, §121 (AMD). 1977, c. 675, §15 (AMD). 2003, c. 164, §1 (AMD). 2015, c. 39, §2 (AMD).

## §1162. WITHDRAWALS

Moneys shall be requisitioned from the state's account in the Unemployment Trust Fund solely for the payment of benefits and for the payment of refunds pursuant to section 1043, subsection 11, paragraph F, subparagraph (2) and section 1225 in accordance with regulations prescribed by the commission. The commissioner shall from time to time requisition from the Unemployment Trust Fund the amounts, not exceeding the amounts standing to this state's account therein, as he deems necessary for the payment of the benefits and refunds for a reasonable future period. Upon receipt thereof the Treasurer of State shall deposit the moneys in the benefit account and warrants shall be issued for the payment of benefits and refunds solely from the benefit account. All warrants issued for the payment of benefits and refunds shall bear the signature of the commissioner or his duly authorized agent for that purpose. When so signed and delivered to the payee, the warrants shall become a check against a designated bank or trust company acting as a depository of the State Government. The commission shall be the final judge of the legality or propriety of any award of benefits, or the amount thereof, appearing in any such warrant prepared by the commissioner, subject only to the right of appeal as provided in section 1194, subsections 8 and 9. Any balance of moneys requisitioned from the Unemployment Trust Fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding periods, or, in the discretion of the commissioner, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the Unemployment Trust Fund, as provided in section 1161. [1979, c. 651, §§ 20, 47 (AMD).]

SECTION HISTORY
1975, c. 462, §4 (AMD). 1979, c. 579, §19 (RPR). 1979, c. 651, §§20,47 (RPR).

## §1163. MANAGEMENT ON DISCONTINUANCE OF UNEMPLOYMENT TRUST FUND

Sections 1141, 1161 and 1162, to the extent that they relate to the Unemployment Trust Fund, shall be operative only so long as such Unemployment Trust Fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited therein by this State for benefit purposes, together with this State's proportionate share of the earnings of such Unemployment Trust Fund, from which no other state is permitted to make withdrawals. If and when such Unemployment Trust Fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties or securities therein, belonging to the Unemployment Compensation Fund of this State shall be transferred to the treasurer of the Unemployment Compensation Fund, who shall hold, invest, transfer, sell, deposit and release such moneys, properties or securities in a manner approved by the commissioner in accordance with this chapter. Such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States of America or of any state in the said United States. Such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for payment of benefits. The Treasurer of State shall dispose of securities or other properties belonging to the Unemployment Compensation Fund only under the direction of the commissioner. [1977, c. 675, §16 (AMD).]

SECTION HISTORY
1977, c. 675, §16 (AMD).

## §1164. SPECIAL ADMINISTRATIVE EXPENSE FUND

The Special Administrative Expense Fund is created as a special fund in the State Treasury. All interest, fines and penalties collected under this chapter and all voluntary contributions tendered as a contribution to this fund must be paid into this fund. The money may not be expended or available for expenditure in any manner that would permit its substitution for, or a corresponding reduction in, federal funds that would in

the absence of that money be available to finance expenditures for the administration of the Employment Security Law. Nothing in this section prevents the money from being used as a revolving fund to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of those expenditures against those funds when received. The money in this fund must be used by the commissioner either for the payment of costs of administration that are found not to have been properly and validly chargeable against federal grants or other funds received for or in the Employment Security Administration Fund on or after January 1, 1943, to finance the Maine Wage Assurance Fund established in section 632; for the payment of costs of administering chapter 26, for which federal funds are not available; or to fund activities that will improve the solvency of the Unemployment Compensation Fund. The money must be available either to satisfy the obligations incurred by the bureau directly or by requesting the Treasurer of State to transfer the required amount from the Special Administrative Expense Fund to the Employment Security Administration Fund or the Maine Wage Assurance Fund. The Treasurer of State shall upon receipt of a written request of the commissioner make any such transfer. The commissioner shall give notice to the commission prior to any expenditures from this fund. The commissioner shall order the transfer of the funds or the payment of any such obligation and the funds must be paid by the Treasurer of State on requisitions drawn by the commissioner directing the State Controller to issue the State Controller's warrant for them. The warrant must be drawn by the State Controller based upon bills of particulars and vouchers certified by an officer or employee designated by the commissioner. The money in this fund is specifically made available to replace, within a reasonable time, any money received by this State pursuant to section 302 of the Federal Social Security Act as amended that, because of any action or contingency, has been lost or has been expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of the Employment Security Law. The money in this fund must be continuously available to the commissioner for expenditure in accordance with this section and may not lapse at any time or be transferred to any other fund except as provided. Any money in the Special Administrative Expense Fund may be used to make refunds of interest, penalties or fines erroneously collected and deposited in the Special Administrative Expense Fund. On June 30th of each year all money in excess of $100,000 in this fund must be transferred to the Unemployment Compensation Fund. [1999, c. 464, §5 (AMD).]

SECTION HISTORY
1977, c. 675, §17 (AMD). 1979, c. 127, §162 (AMD). 1979, c. 202, §2 (AMD). 1979, c. 579, §20 (AMD). 1979, c. 628, (AMD). 1979, c. 651, §§21,47 (AMD). 1983, c. 351, §15 (AMD). 1985, c. 346, §1 (AMD). 1985, c. 518, (AMD). 1991, c. 9, §KK (AMD). 1999, c. 464, §5 (AMD).

## §1165. FEDERAL ADVANCE INTEREST FUND

The Federal Advance Interest Fund shall be a special nonlapsing fund in the State Treasury. All receipts, including interest, fines and penalties collected from the special assessment as defined in section 1241, shall be paid into this fund. Income from investment of this fund shall be deposited to the credit of the fund. All money in the fund shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State Treasury. [1983, c. 738, §1 (NEW).]

The money in this fund shall be used exclusively for the purpose of paying interest incurred on advances received from the Federal Unemployment Trust Fund. If, as of December 31st of any year, no interest is payable and no balance of interest-bearing advances exists in the Unemployment Compensation Fund, the unobligated and unencumbered balance of the Federal Advance Interest Fund in excess of $50,000 shall be transferred to the Unemployment Compensation Fund by January 31st of the following year. [1983, c. 738, §1 (NEW).]

SECTION HISTORY
1983, c. 738, §1 (NEW).

## §1166. COMPETITIVE SKILLS SCHOLARSHIP FUND

**1**. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Competitive Skills Scholarship Fund contributions" means the money payments required by this section to be made into the Competitive Skills Scholarship Fund by an employer as a percentage of the employer's taxable payroll based on the Competitive Skills Scholarship Fund predetermined yield in effect for that Competitive Skills Scholarship Fund rate year. [2007, c. 352, Pt. A, §1 (NEW).]

B. "Competitive Skills Scholarship Fund planned yield" means the percentage of wages, as defined in section 1043, subsection 19, equal to .02% of the total wages for each contributing employer subject to this chapter. [2007, c. 506, §1 (AMD).]

C. "Competitive Skills Scholarship Fund predetermined yield" means the amount determined by multiplying the ratio of total wages to taxable wages, as defined by section 1221, subsection 6, paragraph L, by the Competitive Skills Scholarship Fund planned yield. The Competitive Skills Scholarship Fund predetermined yield is rounded to the nearest .01%. [2007, c. 352, Pt. A, §1 (NEW).]

D. "Competitive Skills Scholarship Fund rate year" has the same meaning as "rate year" under section 1221, subsection 6, paragraph F. [2007, c. 352, Pt. A, §1 (NEW).]

[ 2007, c. 506, §1 (AMD) .]

**2**. **Established.** The Competitive Skills Scholarship Fund, referred to in this section as "the fund," is established as a special fund in the State Treasury. All receipts, including interest, fines and penalties collected from Competitive Skills Scholarship Fund contributions, must be paid into the fund. Income from investment of the fund must be deposited to the credit of the fund. All money in the fund must be deposited, administered and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds.

The money in the fund must be administered by the commissioner exclusively for the purposes of chapter 25, subchapter 5 and for the costs of administering the fund.

[ 2007, c. 352, Pt. A, §1 (NEW) .]

**3**. **Unencumbered balances.** Any unencumbered balance in the fund remaining at the end of any fiscal year remains in the fund and may not be made available for expenditure without specific legislative approval.

[ 2007, c. 352, Pt. A, §1 (NEW) .]

**4**. **No supplantation.** Allocations from the fund must be used to supplement, not supplant, federal or state funds received by the Department of Labor, by a local board or by organizations that deliver workforce investment services through the career center provided by the department.

[ 2007, c. 352, Pt. A, §1 (NEW) .]

**5**. **Employers liable for Competitive Skills Scholarship Fund contribution.** Each employer, as defined in section 1043, subsection 9, other than an employer liable for a payment in lieu of a contribution, shall pay a Competitive Skills Scholarship Fund contribution.

Beginning January 1, 2008, Competitive Skills Scholarship Fund contributions are payable in the same manner as described under section 1221, subsection 1 and in accordance with section 1221, subsection 4-A.

[ 2007, c. 352, Pt. A, §1 (NEW) .]

**6**. **Receipts.** All receipts collected from Competitive Skills Scholarship Fund contributions, including interest, fines and penalties on contributions not paid when due, must be paid into the fund.

[ 2007, c. 352, Pt. A, §1 (NEW) .]

**7**. **Experience rating records.** Competitive Skills Scholarship Fund contributions may not be credited to an employer's experience rating record as described in section 1221, subsection 3.

[ 2007, c. 352, Pt. A, §1 (NEW) .]

**8**. **Relationship to unemployment insurance contributions.** Competitive Skills Scholarship Fund contributions may not be considered as part of the employer's unemployment insurance contribution rate pursuant to section 1221. Unemployment insurance contributions for all employers subject to the contribution provisions of this chapter must be reduced by a percentage equal to the total Competitive Skills Scholarship Fund contribution assessment as in section 1221, subsection 4-A. Exceptions pertaining to new employer rates and contribution rate category 20 are described in section 1221, subsection 4-A, paragraphs A and B.

[ 2007, c. 352, Pt. A, §1 (NEW) .]

**9**. **Other provisions of this chapter.** All provisions of this chapter and rules adopted under this chapter regarding payments, time limits, dates of payment, reports, interest and penalties on amounts not paid by employers when due, fines, liens and warrants that apply to the collection of contributions also apply to the collection of Competitive Skills Scholarship Fund contributions.

[ 2007, c. 352, Pt. A, §1 (NEW) .]

SECTION HISTORY
2007, c. 352, Pt. A, §1 (NEW). 2007, c. 506, §1 (AMD).

## Subchapter 6: BENEFITS

## §1190. STUDY OF BENEFIT CHANGES

**1**. **Referral for review and evaluation.** Whenever a legislative measure containing an unemployment compensation benefit change is proposed, the bureau shall complete a review and evaluation pursuant to subsection 2 in advance of the public hearing on the proposed measure. Once a review and evaluation has been completed, the joint standing committee of the Legislature having jurisdiction over the proposal shall review the findings of the bureau. A proposed benefit change may not be enacted into law unless review and evaluation pursuant to subsection 2 has been completed. For purposes of this section, a "benefit change" means any change in law that will cause a change in the number of people eligible as well as any increase or decrease in the dollar amount, maximum amount or duration of benefits payable.

[ 1999, c. 740, §1 (NEW) .]

**2**. **Content of review.** The review and evaluation must include, at a minimum and to the extent information is available, the following:

A. Projected annual change in cost to the fund for the ensuing 5 years; [2011, c. 212, §2 (AMD).]

B. Projected impact on the experience rating records of employers, sorted by size and industry, and on employer's experience classifications, as described in section 1221, subsection 4-A, for the ensuing 5 years; [2011, c. 212, §2 (AMD).]

C. Review of the impact of a proposed benefit change on recipient groups, including an analysis by gender, income levels and geographic distribution; and [1999, c. 740, §1 (NEW).]

D. Any other information that the bureau considers appropriate to assist the Legislature in deciding on the proposed benefit change. [1999, c. 740, §1 (NEW).]

[ 2011, c. 212, §2 (AMD) .]

SECTION HISTORY
1999, c. 740, §1 (NEW). 2011, c. 212, §2 (AMD).

## §1191. PAYMENT AND AMOUNTS

**1**. **Payment of benefits.** Benefits shall be paid from the Unemployment Compensation Fund through public employment offices or such other agencies as the commission may by regulation prescribe, and in accordance with such regulations as the commission may prescribe.

**2**. **Weekly benefit amount for total unemployment.** Each eligible individual establishing a benefit year on or after October 1, 1983 and before January 1, 2000 who is totally unemployed in any week must be paid with respect to that week benefits equal to 1/22 of the wages, rounded to the nearest lower full dollar amount, paid to that individual in the high quarter of the base period, but not less than $12. Each eligible individual establishing a benefit year on or after January 1, 2000 who is totally unemployed in any week must be paid with respect to that week benefits equal to 1/22 of the average of the wages, rounded to the nearest lower full dollar amount, paid to that individual in the 2 highest quarters of the base period. The maximum weekly benefit amount for claimants requesting insured status determination beginning October 1, 1983 and thereafter from June 1st of a calendar year to May 31st of the next calendar year may not exceed 52% of the annual average weekly wage, rounded to the nearest lower full dollar amount, paid in the calendar year preceding June 1st of that calendar year. For the period from September 28, 1997 to December 31, 1999, the maximum weekly benefit amount is limited to 94% of the amount calculated previously in this subsection, rounded to the nearest lower full dollar amount. For claimants requesting insured status determination on or after April 1, 1995 and before January 1, 2000, the weekly benefit amount must be the amount determined by this subsection minus $3.

[ 1999, c. 464, §6 (AMD) .]

**3**. **Weekly benefit for partial unemployment.** Each eligible individual who is partially unemployed in any week must be paid a partial benefit for that week. The partial benefit is equal to the weekly benefit amount less the individual's weekly earnings in excess of $25. The following amounts are not considered wages for purposes of this subsection:

A. Amounts received from the Federal Government by a member of the National Guard and organized reserve, including base pay and allowances; [2009, c. 466, §1 (NEW).]

B. Amounts received as a volunteer firefighter or as a volunteer emergency medical services person; [2009, c. 466, §1 (NEW).]

C. Amounts received as an elected member of the Legislature; and [2009, c. 466, §1 (NEW).]

D. Earnings for the week received as a result of participation in full-time training under the United States Trade Act of 1974 as amended by the United States Trade and Globalization Adjustment Assistance Act of 2009 up to an amount equal to the individual’s most recent weekly benefit amount. [2009, c. 466, §1 (NEW).]

[ 2009, c. 466, §1 (AMD) .]

**4**. **Maximum amount of benefits.** The maximum amount of benefits that may be paid to any eligible individual with respect to any benefit year, whether for total or partial unemployment, may not exceed the lesser of 26 times the individual's weekly benefit amount or 33 1/3%, rounded to the nearest dollar, of the individual's total wages paid for insured work during the individual's base period, plus the supplemental weekly benefit for dependents payable under subsection 6.

A. If a dislocated worker, as defined in section 1196, subsection 1, who is in training approved under section 1192, subsection 6, 6-A, 6-C, 6-D or 6-E qualifies for additional benefits under section 1043, subsection 5, paragraph B, or exhausts the worker's entitlement to benefits available to the worker under this subsection, the maximum amount under this subsection is the product of the worker's most recent weekly benefit amount multiplied by the number of weeks in which the worker thereafter attends an approved training program. No increase may be made under this paragraph, with respect to any benefit period, greater than 26 times the individual's weekly benefit amount.

(1) Benefits paid to an individual under this paragraphmay not be charged against the experience rating record of any employer, but must be charged to the General Fund.

(2) No benefits may be paid under this paragraph to any person:

(b) Until the person has exhausted benefits for whichthe person is eligible under any unemployment insurance benefit program funded in whole or in part by the State Government or Federal Government; or

(c) Who is eligible for or who has exhausted, after the effective date of this paragraph, trade adjustment allowances as provided by the United States Trade Act of 1974, Title II, Chapter 2, Public Law 93-617, United States Code, Title 19, Section 2291, et seq., and any amendments or additions thereto, or a similar successor provision of that Act, except that any individual who was eligible for and received less than 26 weeks of benefits under the United States Trade Act may receive benefits for the number of weeks by which their benefits under that Act are less than 26 weeks.

[2009, c. 271, §2 (AMD).]

[ 2009, c. 271, §2 (AMD) .]

**5**. **Minimum amount of benefits.** An individual otherwise eligible for benefits, whether for total or partial unemployment, with respect to any benefit year, shall not be deemed to have exhausted his benefits in any benefit year, until he has received, in benefits, at least $300, notwithstanding any other provision in this chapter to the contrary.

[ 1971, c. 538, §22 (AMD) .]

**6**. **Supplemental benefit for dependents.** An individual in total or partial unemployment and otherwise eligible for benefits must be paid for each week of that unemployment, in addition to the amounts payable under subsections 2 and 3, the sum of $10 for each unemancipated child of the individual who in any part of the benefit year and during any part of the individual's period of eligibility is, in fact, dependent upon and is being wholly or mainly supported by the individual, and who is under the age of 18, or who is 18 years of age or over and incapable of earning wages because of mental or physical incapacity, or who is a full-time student as defined in Title 39-A, section 102, subsection 8, paragraph C, or who is in that individual's custody pending the adjudication of a petition filed by the individual for the adoption of the child in a court of competent jurisdiction and for each such child for whom that individual is under a decree or order from a court of competent jurisdiction to contribute to that child's support and for whom no other person is receiving allowances hereunder. In no instance may the dependency benefits as provided in this subsection be more than 50% of the individual's weekly benefit amount.

The commission shall prescribe regulations as to who may receive a dependency allowance when both spouses are eligible to receive unemployment compensation benefits.

No individual may be eligible to receive dependency allowances as provided in this subsection for any week during which that individual's spouse is employed full time provided that the spouse is contributing some support to their dependent or dependents. For purposes of this subsection, "employed full time" means the receipt of any wages, earnings, salary or other income equivalent to that amount that would be received for a 40-hour work week.

[ 2009, c. 2, §77 (COR) .]

7. **Child support obligations deducted and withheld from benefits.** Child support obligations shall be deducted and withheld from benefits as follows.

A. An individual filing a new claim for unemployment compensation on and after October 1, 1982 shall, at the time of filing the claim, disclose whether or not the individual owes child support obligations as defined under paragraph G. If an individual discloses that that individual owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the state or local child support enforcement agency enforcing the obligation that the individual has been determined to be eligible for unemployment compensation.

The state or local child support enforcement agency shall biweekly provide the commissioner by magnetic tape or other automated process with identification of individuals who owe child support obligations as defined under paragraph G. [1993, c. 6, Pt. C, §10 (AMD).]

B. Notwithstanding any other provisions of this chapter, the commissioner shall deduct and withhold from any unemployment compensation payable to an individual who owes child support obligations and who has been reported under paragraph A:

(1) Amounts in excess of income exempt under Title 19-A, section 2356, if neither subparagraph (2) nor subparagraph (3) applies;

(2) The amount, if any, determined pursuant to an agreement submitted to the commissioner under the United States Social Security Act, Section 454 (20) (B) (i), by the state or local child support enforcement agency, unless subparagraph (3) applies; or

(3) Any amount otherwise required to be so deducted and withheld from the unemployment compensation pursuant to legal process, as that term is defined in the United States Social Security Act, Section 462 (e), properly served upon the commissioner, whether or not the individual has been reported under paragraph A. [1995, c. 694, Pt. D, §53 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

C. Any amount deducted and withheld under paragraph B shall be paid by the commissioner to the appropriate state or local child support enforcement agency. [1981, c. 548, §1 (NEW).]

D. Any amount deducted and withheld under paragraph B shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations. [1981, c. 548, §1 (NEW).]

E. For purposes of paragraphs A to D, the term, "unemployment compensation" means any compensation payable under this chapter, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment. [1981, c. 548, §1 (NEW).]

F. This subsection applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the commissioner under this subsection which are attributable to child support obligations being enforced by the state or local child support enforcement agency. [1981, c. 548, §1 (NEW).]

G. The term "child support obligations" is defined for purposes of this subsection as including only obligations which are being enforced pursuant to a plan described in the United States Social Security Act, Section 454, which has been approved by the Secretary of Health and Human Services under the United States Social Security Act, Title IV, Part D. [1981, c. 548, §1 (NEW).]

H. The term "state or local child support enforcement agency" as used in this subsection means any agency of this State or a political subdivision thereof operating pursuant to a plan described in paragraph G. [1981, c. 548, §1 (NEW).]

[ 1995, c. 694, Pt. D, §53 (AMD); 1995, c. 694, Pt. E, §2 (AFF) .]

**8**. **Unemployment compensation; rounded to lowest dollar amount.** Notwithstanding any other provisions of this law to the contrary, any amount of unemployment compensation payable to any individual for any week if not an even dollar amount, shall be rounded to the next lower full dollar amount.

[ 1983, c. 13, §6 (NEW) .]

**9**. **Voluntary withholding of income tax.** Individuals must be notified that federal, state and local income tax may be withheld from payments made on or after January 1, 1997 as follows.

A. An individual filing a new claim for unemployment compensation must be advised at the time of filing the claim, that:

(1) Unemployment compensation is subject to federal and state income taxes;

(2) Requirements exist pertaining to estimated tax payments;

(3) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the federal Internal Revenue Code;

(4) Notwithstanding the requirements of Title 36, section 5255-B, the individual may elect to have state income tax deducted and withheld from the individual's payment of unemployment compensation at the rate of 5%; and

(5) The individual must be permitted to change a previously elected withholding status. [1995, c. 554, §1 (NEW).]

B. Amounts deducted and withheld from unemployment compensation remain in the unemployment compensation fund until transferred to the federal or state taxing authority as a payment of income tax. [1995, c. 554, §1 (NEW).]

C. The commissioner shall follow all procedures specified by the United States Department of Labor and the federal Internal Revenue Service pertaining to the deducting and withholding of income tax. [1995, c. 554, §1 (NEW).]

D. Amounts may be deducted and withheld under this subsection only after amounts are deducted and withheld for any overpayments, child support obligations, food stamp overissues or any other amounts required to be deducted and withheld under this chapter. [1995, c. 554, §1 (NEW).]

For purposes of this subsection, the term "unemployment compensation" means any compensation payable under this chapter, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

[ 1995, c. 554, §1 (NEW) .]

**10**. **Estimated benefit.** Upon inquiry from an individual, the Department of Labor shall provide an estimate of the amount and duration of benefits likely to be paid to that individual under this chapter if the individual applied for benefits that day. If the inquiry is made within 2 weeks before the beginning of a calendar quarter, the Department of Labor shall also provide an estimate of the duration and amount of

benefits likely to be paid to that individual if the individual applied for benefits after the beginning of that calendar quarter. Inquiries under this subsection may be made and answered over the telephone and are not considered applications for benefits.

[ 2003, c. 95, §1 (NEW) .]

SECTION HISTORY
1965, c. 217, §2 (AMD). 1965, c. 381, §§8-10 (AMD). 1965, c. 457, §§2,3 (AMD). 1967, c. 323, (AMD). 1967, c. 398, §2 (AMD). 1969, c. 388, (AMD). 1971, c. 538, §§21,22 (AMD). 1975, c. 568, §§1,2 (AMD). 1975, c. 710, §1-A (AMD). 1975, c. 720, (AMD). 1977, c. 444, (AMD). 1979, c. 515, §12 (AMD). 1981, c. 342, §§1,2 (AMD). 1981, c. 548, §1 (AMD). 1983, c. 13, §§3-6 (AMD). 1983, c. 305, §§2,3 (AMD). 1983, c. 862, §75 (AMD). 1985, c. 591, §4 (AMD). 1985, c. 737, §A71 (AMD). 1985, c. 814, §J2 (AMD). 1987, c. 570, §2 (AMD). 1987, c. 636, §1 (AMD). 1989, c. 363, §1 (AMD). 1991, c. 193, §3 (AMD). 1991, c. 870, §2 (AMD). 1991, c. 885, §E38 (AMD). 1991, c. 885, §E47 (AFF). 1993, c. 6, §C10 (AMD). 1993, c. 22, §2 (AMD). 1993, c. 528, §1 (AMD). 1995, c. 9, §2 (AMD). 1995, c. 554, §1 (AMD). 1995, c. 694, §D53 (AMD). 1995, c. 694, §E2 (AFF). 1997, c. 380, §1 (AMD). 1997, c. 745, §1 (AMD). 1999, c. 464, §6 (AMD). 2003, c. 95, §1 (AMD). RR 2009, c. 2, §77 (COR). 2009, c. 271, §2 (AMD). 2009, c. 466, §1 (AMD).

## §1192. ELIGIBILITY CONDITIONS

An unemployed individual shall be eligible to receive benefits with respect to any week only if:
[1979, c. 651, §22 (AMD).]

**1**. **Has claim for benefits.** He has made a claim for benefits with respect to such week or part thereof in accordance with such regulations as the commission may prescribe;

[ 1975, c. 344, §1 (AMD) .]

**2**. **Has registered for work.** The individual has registered for work at, and continued to report at, an employment office in accordance with rules the commission adopts, except that the commission may, by rule, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the commission finds that compliance with the requirements would be oppressive, or would be inconsistent with the purposes of this chapter. A rule under this subsection may not conflict with section 1191, subsection 1.

The individual must actively seek work each week in which a claim for benefits is filed unless the individual is participating in approved training under subsection 6 or work search has been waived in accordance with rules adopted by the commission and provide evidence of work search efforts in a manner and form as prescribed by the Department of Labor. Failure to provide required work search documentation results in a denial of benefits in accordance with section 1194, subsection 2 for the week or weeks for which no documentation was provided unless the department determines there is good cause for the individual's failure to comply with this requirement;

[ 2013, c. 314, §1 (AMD) .]

**3**. **Is able and available for work.** The individual is able to work and is available for full-time work at the individual's usual or customary trade, occupation, profession or business or in such other trade, occupation, profession or business for which the individual's prior training or experience shows the individual to be fitted or qualified; and in addition to having complied with subsection 2 is actively seeking work in accordance with the regulations of the commission; provided that no ineligibility may be found solely because

the claimant is unable to accept employment on a shift, the greater part of which falls between the hours of midnight to 5 a.m., and is unavailable for that employment because of parental obligation, the need to care for an immediate family member, or the unavailability of a personal care attendant required to assist the unemployed individual who is a handicapped person; and provided that an unemployed individual who is neither able nor available for work due to good cause as determined by the deputy is eligible to receive prorated benefits for that portion of the week during which the individual was able and available.

A. Notwithstanding this subsection, beginning January 1, 2004, an individual who is not available for full-time work as required in this subsection is not disqualified from receiving benefits if:

(1) The individual worked less than full time for a majority of the weeks during that individual's base period and the individual is able and available for and actively seeking part-time work for at least the number of hours in a week comparable to those customarily worked in part-time employment during that individual's base period; or

(2) The individual worked full time for a majority of the weeks during that individual's base period, but is able and available for and actively seeking only part-time work because of the illness or disability of an immediate family member or because of limitations necessary for the safety or protection of the individual or individual's immediate family member. [2007, c. 352, Pt. C, §1 (AMD).]

[ 2007, c. 352, Pt. C, §1 (AMD) .]

**4**. **Has served a waiting period.**

[ 1975, c. 8, (RP) .]

**4-A**. **Has served a waiting period.** For each eligible individual establishing a benefit year on or after May 10, 1981, he has served a waiting period of one week of total or partial unemployment. No week may be counted as a week of total or partial unemployment for the purpose of this subsection:

A. If benefits have been paid with respect to that week; [1981, c. 220, (NEW).]

B. Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits; and [1981, c. 220, (NEW).]

C. Unless the individual was eligible for benefits with respect to that week, as provided in this section and section 1193, except for the requirements of this subsection; [1981, c. 220, (NEW).]

[ 1981, c. 220, (NEW) .]

**5**. **Has earned wages.** For each eligible individual establishing a benefit year on or after January 1, 1980, the individual has been paid wages equal to or exceeding 2 times the annual average weekly wage for insured work in each of 2 different quarters in the individual's base period and has been paid total wages equal to or exceeding 6 times the annual average weekly wage in the individual's base period for insured work. The annual average weekly wage amount to be used for purposes of this subsection is that which is applicable at the time the individual files a request for determination of insured status. For the purpose of this subsection, wages are counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer by whom such wages were paid has satisfied the conditions of section 1043, subsection 9, or section 1222, subsection 3, with respect to becoming an employer; provided that no individual may receive benefits in a benefit year, unless, subsequent to the beginning of the next preceding benefit year during which that individual received benefits, that individual performed services and earned remuneration for such service in an amount equal to not less than 8 times that individual's weekly benefit amount in employment by an employer in the benefit year being established. This subsection applies only to any individual requesting determination of insured status on and after January 1,

1972. In determining a claimant's qualification under this subsection, payments pursuant to former Title 39, sections 54 and 55, the Workers' Compensation Act, and former Title 39, sections 188 and 189, Title 39-A, sections 608 and 609, the Occupational Disease Law, are considered wages for insured work.

[ 1991, c. 885, Pt. E, §39 (AMD); 1991, c. 885, Pt. E, §47 (AFF) .]

**6**. **Approved training.** Notwithstanding any other provisions of this chapter, any otherwise eligible claimant in training, as approved for the claimant by the deputy, under rules adopted by the commission with the advice and consent of the commissioner, may not be denied benefits for any week with respect to subsection 3, relating to availability and the work search requirement or the provisions of section 1193, subsection 3. Enrollment in a degree-granting program may not be the sole cause for denial of approved training status for an otherwise eligible claimant. Benefits paid to any eligible claimant while in approved training, for which, except for this subsection, the claimant could be disqualified under section 1193, subsection 3, may not be charged against the experience rating record of any employer but must be charged to the General Fund. For purposes of this subsection, "the deputy" means a representative from the bureau designated by the commissioner.

[ 2013, c. 474, §1 (AMD) .]

**6-A**. **Prohibition against disqualification of individuals in approved training under the United States Trade Act of 1974.** Notwithstanding any other provisions of this chapter, no otherwise eligible individual may be denied benefits for any week because the individual is in training approved under 19 United States Code, Section 2296(a) or under any amendment or addition to the United States Trade Act of 1974, nor may that individual be denied benefits by reason of leaving work to enter that training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this chapter, or any applicable federal unemployment compensation law, relating to availability for work, active search for work or refusal to accept work. Benefits paid to any eligible claimant while in such training for which, except for this subsection, the claimant could be disqualified under section 1193, subsection 1 or 3, may not be charged against the experience rating record of any employer but must be charged to the General Fund.

For purposes of this subsection, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the United States Trade Act of 1974, and wages for such work at not less than 80% of the individual's average weekly wage as determined for the purposes of the United States Trade Act of 1974.

[ 2009, c. 466, §2 (AMD) .]

**6-B**. **Prohibition against disqualification of individuals in approved training under United States Public Law 97-300.** Notwithstanding any other provisions of this chapter, the acceptance of training for such opportunities as are available through United States Public Law 97-300 shall be deemed to be acceptance of training with the approval of the State within the meaning of any other provisions of federal or state law relating to unemployment benefits.

[ 1983, c. 510, (NEW) .]

**6-C**. **Prohibition against disqualification of individuals in approved training under section 1196.** Notwithstanding any other provision of this chapter, no otherwise eligible individual may be denied benefits for any week because that individual is in training as approved by the deputy, under rules adopted by the commission with the advice and consent of the commissioner, nor may that individual be denied benefits by reason of leaving work to enter that training, as long as the work left is not suitable employment.

For purposes of this subsection, "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, and "the deputy" means a representative from the bureau designated by the commissioner.

[ 2013, c. 474, §2 (AMD) .]

**6-D**. **Prohibition against disqualification of individuals in approved training.** Notwithstanding any provisions of this chapter, the acceptance of training for opportunities available under sections 2031 and 2033 is deemed to be acceptance of training with state approval under federal or state law relating to unemployment benefits.

[ 2009, c. 271, §3 (AMD) .]

**6-E**. **Prohibition against disqualification of individuals in approved training under federal Workforce Investment Act.** Notwithstanding any other provision of this chapter, unless inconsistent with federal law, the acceptance of training opportunities available through the federal Workforce Investment Act of 1998, 20 United States Code, Sections 9201 to 9276 (1998) is deemed to be acceptance of training with the approval of the State within the meaning of any other provision of federal or state law relating to unemployment benefits.

[ 1999, c. 705, §1 (NEW) .]

**7**. **Service with nonprofit organizations and educational institutions and state and local governments.** Benefits based on service in employment defined in section 1043, subsection 11, paragraph A-1, subparagraphs (1) and (3) shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this Act; except that:

A. With respect to weeks of unemployment beginning after December 31, 1977, in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between 2 successive academic years or terms, or when an agreement provides instead for a similar period between 2 regular but not successive terms, during such period, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms, and if there is a contract or annual written reasonable assurance that such individual will perform services in any such capacity for any educational institution in the 2nd of such academic years or terms; [1977, c. 585, §2 (AMD).]

B. With respect to weeks of unemployment beginning after September 3, 1982,in any other capacity for an educational institution, benefits shall not be paid on the basis of those services to any individual for any week which commences during a period between 2 successive academic years or terms if the individual performs those services in the first of the academic years or terms and there is annual written reasonable assurance that the individual will perform the services in the 2nd of that academic year or terms; except that if benefits are denied to any individual under this paragraph and the individual was not offered an opportunity to perform the services for the educational institution for the 2nd of those academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph; [1983, c. 13, §7 (AMD).]

C. With respect to weeks of unemployment beginning after December 31, 1977, benefits shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs any services described in paragraphs A or B in the period immediately before such vacation period or holiday recess, and there is annual written reasonable assurance that such individual will perform any such services in the period immediately following such vacation period or holiday recess. [1977, c. 585, §2 (AMD).]

D. With respect to weeks of unemployment beginning after June 30, 1979, benefits shall be denied to an individual who performed services in an educational institution while in the employ of an educational service agency for any week which commences during a period described in paragraphs A, B and C if that individual performs any services described in paragraphs A or B in the first of these periods, as specified in the applicable paragraph, and there is a contract or a reasonable assurance as applicable in the appropriate paragraph, that the individual will perform these services in the 2nd of these periods, as applicable in the appropriate paragraph. For purposes of this paragraph the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purposes of providing these services to one or more educational institutions. [1979, c. 515, §14 (NEW).]

[ 1983, c. 13, §7 (AMD) .]

**8**. **No denial or reduction of benefits.** Benefits shall not be denied or reduced to an individual solely because he files a claim in another state, or a contiguous country with which the United States has an agreement with respect to unemployment compensation, or because he resides in another state or contiguous country at the time he files a claim for benefits.

[ 1971, c. 538, §27 (NEW) .]

**9**. **No denial of benefits for jury service.** Benefits shall not be denied to an individual solely because he is selected to serve as a juror. Individuals, who receive actual earnings for jury service, shall be paid a partial benefit in an amount equal to his weekly benefit amount less that amount earned for jury service.

[ 1975, c. 448, (NEW) .]

**10**. **Benefit payments to athletes.** Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between 2 successive sport seasons or similar periods, if such individual performed such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the latter of such seasons or similar periods.

[ 1977, c. 570, §22 (NEW) .]

**11**. **Benefit payments to illegal aliens.** On and after January 1, 1978, benefits are not payable on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status must be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of the individual's alien status may be made except upon a preponderance of the evidence.

[ 1991, c. 377, §14 (AMD) .]

**12**. **Participation in reemployment services.** The individual who has been referred to reemployment services, pursuant to a profiling system established by the commissioner, participates in those services or similar services unless it is determined that the individual has completed those services or there is good cause for the individual's failure to participate; and

[ 2011, c. 645, §3 (AMD) .]

**13**. **Reemployment eligibility assessment services; participation.** In the case that the individual has been referred to reemployment eligibility assessment services by the Department of Labor, the individual participates in those services, unless the department determines there is good cause for the individual's failure to participate. Failure to participate in reemployment eligibility assessment services without good cause results in a denial of benefits until the individual participates.

[ 2011, c. 645, §4 (NEW) .]

For purposes of subsections 2, 3, 12 and 13, "good cause" means the unemployed individual is ill; the presence of the unemployed individual is required due to an illness of the unemployed individual's spouse, children, parents, stepparents, brothers or sisters, or relatives who have been acting in the capacity of a parent of either the unemployed individual or the unemployed individual's spouse; the unemployed individual is in attendance at the funeral of such a relative; the unemployed individual is observing a religious holiday as required by religious conviction; the unemployed individual is performing either a military or civil duty as required by law; or other cause of a necessitous and compelling nature, including child care emergencies and transportation emergencies. "Good cause" does not include incarceration as a result of a conviction for a felony or misdemeanor. [2011, c. 645, §5 (NEW).]

SECTION HISTORY
1965, c. 381, §§11,12 (AMD). 1965, c. 409, (AMD). 1967, c. 340, (AMD). 1967, c. 398, §3 (AMD). 1971, c. 538, §§23-27 (AMD). 1973, c. 555, §13 (AMD). 1975, c. 8, (AMD). 1975, c. 25, (AMD). 1975, c. 26, (AMD). 1975, c. 344, §§1,2 (AMD). 1975, c. 448, (AMD). 1975, c. 568, §3 (AMD). 1975, c. 770, §122 (AMD). 1977, c. 570, §§21,22 (AMD). 1977, c. 585, §2 (AMD). 1979, c. 165, §2 (AMD). 1979, c. 496, §1 (AMD). 1979, c. 515, §§13-14 (AMD). 1979, c. 579, §§21,22 (AMD). 1979, c. 651, §§22,23,47 (AMD). 1981, c. 220, (AMD). 1981, c. 548, §2 (AMD). 1983, c. 13, §7 (AMD). 1983, c. 129, (AMD). 1983, c. 257, §1 (AMD). 1983, c. 351, §16 (AMD). 1983, c. 510, (AMD). 1983, c. 816, §A22 (AMD). 1985, c. 348, §5 (AMD). 1987, c. 570, §3 (AMD). 1987, c. 861, §21 (AMD). 1989, c. 502, §§A109,A110 (AMD). 1991, c. 377, §14 (AMD). 1991, c. 870, §3 (AMD). 1991, c. 885, §E39 (AMD). 1991, c. 885, §E47 (AFF). RR 1995, c. 1, §23 (COR). 1995, c. 222, §1 (AMD). 1995, c. 665, §DD1 (AMD). 1995, c. 665, §DD12 (AFF). 1999, c. 705, §1 (AMD). 2003, c. 458, §1 (AMD). 2005, c. 454, §1 (AMD). 2007, c. 352, Pt. C, §1 (AMD). 2009, c. 271, §3 (AMD). 2009, c. 466, §2 (AMD). 2011, c. 645, §§2-5 (AMD). 2013, c. 314, §1 (AMD). 2013, c. 474, §§1, 2 (AMD).

## §1193. DISQUALIFICATION

An individual shall be disqualified for benefits:

**1**. **Voluntarily leaves work.**

A. For the week in which the claimant left regular employment voluntarily without good cause attributable to that employment. The disqualification continues until the claimant has earned 4 times the claimant's weekly benefit amount in employment by an employer. A claimant may not be disqualified under this paragraph if:

(1) The leaving was caused by the illness or disability of the claimant or an immediate family member and the claimant took all reasonable precautions to protect the claimant's employment status by promptly notifying the employer of theneed for time off, a change or reduction in hours or a shift change and being advised by the employer that the time off or change or reduction in hours or shift change cannot or will not be accommodated;

(2) The leaving was necessary to accompany, follow or join the claimant's spouse in a new place of residence, and the claimant is in all respects able, available and actively seeking suitable work;

(3) The leaving was in good faith in order to accept new employment on a permanent full-time basis and the new employment did not materialize for reasons attributable to the new employing unit;

(4) The leaving was necessary to protect the claimant or any member of the claimant's immediate family from domestic abuse or the leaving was due to domestic violence that caused the claimant reasonably to believe that the claimant's continued employment would jeopardize the safety of the claimant or any member of the claimant's immediate family and the claimant made all reasonable efforts to preserve the employment; or

(5) The claimant's employer announced in writing to employees that it planned to reduce the work force through a layoff or reduction in force and that employees may offer to be among those included in the layoff or reduction in force, at which time the claimant offered to be one of the employees included in the layoff or reduction in force and the claimant's employer accepted the claimant's offer, thereby ending the employment relationship.

Separation from employment based on the compelling family reasons in subparagraphs (1), (2) and (4) does not result in disqualification. [2009, c. 33, §1 (AMD).]

B. For the duration of his unemployment period subsequent to his having retired; or having been retired from his regular employment as a result of a recognized employer policy or program, under which he is entitled to receive pension payments, if so found by the deputy, and disqualification shall continue until claimant has earned 6 times his weekly benefit amount in employment by an employer; [1979, c. 651, §46 (AMD).]

C. For the duration of an unpaid voluntary leave of absence or sabbatical leave that has been mutually agreed to by the employee and the employer. [1989, c. 702, Pt. F, §1 (NEW).]

[ 2009, c. 33, §1 (AMD) .]

**2**. **Discharge for misconduct.** For the week in which the individual has been discharged for misconduct connected with the individual's work, if so found by the deputy, and disqualification continues until claimant has earned 8 times the claimant's weekly benefit amount in employment by an employer.

A. For the duration of any period for which the individual has been suspended from the individual's work by the individual's employer as discipline for misconduct, if so found by the deputy, or until the claimant has earned 8 times the claimant's weekly benefit amount in employment by an employer; [2011, c. 645, §6 (AMD).]

[ 2011, c. 645, §6 (AMD) .]

**3**. **Refused to accept work.** For the duration of the individual's unemployment subsequent to the individual's having refused to accept an offer of suitable work for which the individual is reasonably fitted, or having refused to accept a referral to a suitable job opportunity when directed to do so by a local employment office of this State or another state or if an employer is unable to contact a former employee at last known or given address, for the purpose of recall to suitable employment; or the individual fails to respond to a request to report to the local office for the purpose of a referral to a suitable job, and the disqualification continues until claimant has earned 10 times the claimant's weekly benefit amount in employment by an employer. If the deputy determines that refusal has occurred for cause of necessitous and compelling nature, the individual is ineligible while such inability or unavailability continues, but is eligible to receive prorated benefits for that portion of the week during which the individual was able and available.

A. In determining whether or not any work is suitable for an individual during the first 10 consecutive weeks of unemployment, the deputy shall consider the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training, the individual's experience and prior earnings, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation and the distance of the available work from the individual's residence.

In determining whether or not work is suitable for an individual after the first 10 consecutive weeks of unemployment, the deputy shall consider the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness, the individual's prior earnings, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation and the distance of the available work from the individual's residence. The individual's prior earnings may not be considered with respect to an offer of or referral to an otherwise suitable job that pays wages equal to or exceeding the average weekly wage in the State. [2011, c. 645, §7 (AMD).]

B. Notwithstanding any other provisions of this chapter, work may not be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(2) If the wages, hours or other conditions of work are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(4) If the position offered is the same one previously vacated by the claimant for good cause attributable to that employment or is the position that the employee left for reasons attributable to that employment, but which were found insufficient to relieve disqualification for benefits under subsection 1, paragraph A, as long as, in either instance, the specific good cause or specific reasons for leaving have not been removed or otherwise changed; and

(5) If the position offered is on a shift, the greater part of which falls between the hours of midnight and 5 a.m., and is refused because of parental obligation, the need to care for an immediate family member or the unavailability of a personal care attendant required to assist the unemployed individual who is a handicapped person; [2011, c. 645, §7 (AMD).]

[ 2011, c. 645, §7 (AMD) .]

**4**. **Stoppage of work.** For any week with respect to which the deputy, after notification by the Director of Unemployment Compensation under section 1194, subsection 2, finds that the claimant's total or partial unemployment is due to a stoppage of work that exists because of a labor dispute at the factory, establishment or other premises at which the claimant is or was employed, or there would have been a stoppage of work had substantially normal operations not been maintained with other personnel previously and currently employed by the same employer and any other additional personnel that the employer may hire to perform tasks not previously done by the striking employees. This subsection does not apply if it is shown to the satisfaction of the deputy that:

A. The claimant is not participating in or financing or directly interested in the labor dispute that caused the stoppage of work; [1997, c. 391, §1 (AMD).]

B. The claimant does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; [1997, c. 391, §1 (AMD).]

C. The claimant has obtained employment subsequent to the beginning of the stoppage of work and has earned at least 8 times the claimant's weekly benefit amount in employment by an employer or has been in employment by an employer for 5 full weeks; [1997, c. 391, §1 (AMD).]

D. The claimant became unemployed because of a strike or lockout caused by an employer's willful failure to observe the terms of the safety and health section of a union contract; an employer's willful failure to comply in a timely fashion with an official citation for a violation of federal and state laws involving occupational safety and health; or the quitting of labor by an employee or employees in good faith because of an abnormally dangerous condition for work at the place of employment of that employee or employees; provided that the strike or lockout does not extend past the time of

the employer's compliance with the safety and health section of the union contract, the employer's compliance with the official citation or the finding that an abnormally dangerous condition does not exist by a federal or state official empowered to issue official citations for violation of federal and state laws involving occupational safety and health; or [1997, c. 391, §1 (AMD).]

E. The claimant became unemployed because of a lockout by the employer. For purposes of this subsection, the word "lockout" means the withholding of employment by an employer from its employees for the purpose of resisting their demands or gaining a concession from them. [1997, c. 391, §1 (NEW).]

If in any case separate branches of work that are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each department must, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises;

[ 1997, c. 391, §1 (AMD) .]

**5**. **Receiving remuneration.** For any week with respect to which the individual is receiving, has been scheduled to receive or has received remuneration in the form of:

A. Dismissal wages, wages in lieu of notice, terminal pay or holiday pay; [2011, c. 645, §8 (AMD).]

A-1. Any vacation pay in an amount exceeding the equivalent of 4 weeks' wages for that individual; or [2011, c. 645, §8 (NEW).]

B. Benefits under the unemployment compensation or employment security law of any state or similar law of the United States. [1985, c. 506, Pt. A, §51 (RPR).]

C. [1981, c. 149, §1 (RP).]

If the remuneration under paragraph A is less than the benefits that would otherwise be due under this chapter, the individual is entitled to receive for that week, if otherwise eligible, benefits reduced by the amount of the remuneration, rounded to the nearest lower full dollar amount. Earned vacation pay that is paid to the individual prior to the individual's being notified orally or in writing by the employer of the employer's intent to sever the employment relationship is not considered remuneration for purposes of this subsection;

[ 2011, c. 645, §8 (AMD) .]

**6**. **Has falsified.** For any week for which the deputy finds that the claimant made a false statement or representation knowing it to be false or knowingly failed to disclose a material fact in the claimant's application to obtain benefits from any state or federal unemployment compensation program administered by the bureau. In addition, for a first or 2nd occurrence, the claimant is ineligible to receive any benefits for a period of not less than 6 months nor more than one year from the mailing date of the determination, and the commissioner shall assess a penalty of 50% of the benefits falsely obtained for the first occurrence and 75% for the 2nd occurrence. If an individual is disqualified for a 3rd occurrence of statement falsification or misrepresentation in an effort to obtain benefits, the commissioner shall assess a penalty of 100% of the benefits falsely obtained and the claimant is disqualified from receiving benefits for a period of time to be determined by the commissioner. An amount equal to 15% of each overpayment on which these penalties were assessed must be transferred directly into the fund account upon recovery;

[ 2013, c. 314, §2 (AMD) .]

**7**. **Discharged for crime.** For the period of unemployment next ensuing with respect to which he was discharged for conviction of felony or misdemeanor in connection with his work. The ineligibility of such individual shall continue for all weeks subsequent until such individual has thereafter earned $600 or 8 times his weekly benefit amount, whichever is greater, in employment by an employer;

[ 1985, c. 420, §1 (AMD) .]

**7-A**. **Absence from work due to incarceration.** For the duration of his unemployment subsequent to a discharge arising from his absence from work for more than 2 workdays due to his incarceration for conviction of a criminal offense. This disqualification continues until the claimant has earned 4 times his weekly benefit amount in employment by an employer; or

[ 1985, c. 420, §2 (NEW) .]

**8**. **Retirement benefits.**

[ 1981, c. 149, §3 (RP) .]

**9**. **Receiving pension.**

[ 2007, c. 352, Pt. B, §1 (RP) .]

**10**. **Receiving pension.** Except as provided in this subsection, for any week with respect to which the individual is receiving a governmental or other pension, retirement or retired pay, annuity or any other similar periodic payment under a plan maintained or contributed to by a base period or chargeable employer.

A. The individual receives benefits with no reduction under this subsection if:

(1) The individual is receiving a pension paid under the United States Social Security Act or any other pension or plan to which the individual made at least 50% of the contributions;

(2) All contributions to the plan were made by the individual and an employer or any other person or organization who is not a base period or chargeable employer; or

(3) The services performed for the employer by the individual during the base period, or remuneration received for these services, did not affect the individual's eligibility for, or increase the amount of, that pension, retirement or retired pay, annuity or similar payment. [2007, c. 352, Pt. B, §2 (NEW).]

B. If the individual contributed to the plan, but not at least 50% of the contributions, the individual receives a benefit reduced by the prorated weekly amount of the pension after deduction of that portion of the pension that is directly attributable to the percentage of the contributions made to the plan by that individual. The benefit may not be reduced below zero. [2007, c. 352, Pt. B, §2 (NEW).]

C. If the individual did not contribute to the plan, the individual receives a benefit reduced by the full prorated weekly amount of the pension received. The benefit may not be reduced below zero. [2011, c. 516, §1 (NEW).]

[ 2011, c. 516, §1 (AMD) .]

SECTION HISTORY
1965, c. 381, §§13-18 (AMD). 1965, c. 457, §4 (AMD). 1967, c. 293, (AMD). 1969, c. 176, (AMD). 1971, c. 209, (AMD). 1971, c. 305, (AMD). 1971, c. 422, (AMD). 1971, c. 538, §28 (AMD). 1973, c. 555, §14 (AMD). 1975, c. 537, (AMD). 1975, c. 770, §123 (AMD). 1977, c. 472, §§1,1-A,2 (AMD). 1977, c. 536, (AMD). 1979, c. 98, (AMD). 1979, c. 428, §§1-6 (AMD). 1979, c. 499, (AMD). 1979, c. 515, §§15-16A (AMD). 1979, c. 579, §45 (AMD). 1979, c. 651, §§46,47 (AMD). 1979, c. 663, §161 (AMD). 1981, c. 149, §§1-4 (AMD). 1981, c. 470, §A146 (AMD). 1983, c. 13, §8 (AMD). 1983, c. 257, §2 (AMD). 1983, c. 305, §§4,5 (AMD). 1983, c. 351, §17 (AMD). 1983, c. 650, §1 (AMD). 1983, c. 753, §1 (AMD). 1985, c. 66, (AMD). 1985, c. 348, §6 (AMD). 1985, c. 420, §§1,2 (AMD). 1985, c. 506, §A51 (AMD). 1985, c. 737, §A72 (AMD). 1987, c. 365, §1 (AMD). 1989, c. 702, §F1 (AMD). 1991, c. 560, §2 (AMD). 1997, c. 391,

§1 (AMD). 1999, c. 464, §7 (AMD). 2003, c. 28, §1 (AMD). 2007, c. 352, Pt. B, §§1, 2 (AMD). 2009, c. 33, §1 (AMD). 2009, c. 638, §1 (AMD). 2011, c. 516, §1 (AMD). 2011, c. 645, §§6-9 (AMD). 2013, c. 314, §2 (AMD).

## §1194. CLAIMS FOR BENEFITS

**1**. **Filing.** Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain printed statements of the regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed a printed statement of those regulations. The printed statements shall be supplied by the commissioner to each employer without cost to him.

**1-A**. **Partial unemployment claim forms.** An employer shall issue a properly completed partial unemployment claim form to each of the employer's employees who is customarily employed full time and who is given less than full-time hours during a week due to a lack of work, or who is given no work for one week due to a lack of work and who is not separated from that employer.

A. Partial unemployment claim forms for a week must be provided to eligible employees no later than the day that the payroll for that week is available to employees. [1999, c. 376, §1 (NEW).]

B. An employer who fails to provide a partial unemployment claim form in accordance with this subsection is subject to a fine of $25 per day per form for each day the form is late. [1999, c. 376, §1 (NEW).]

C. An employer is not required to issue a partial unemployment claim form to an employee:

(1) Whose earnings or earnings plus holiday pay for the week exceed the maximum weekly benefit amount plus $5; or

(2) Whose vacation or holiday pay for the week exceeds the maximum weekly benefit amount. [1999, c. 376, §1 (NEW).]

D. The Director of Unemployment Compensation may authorize the use of partial unemployment claim forms for periods of 2 or more consecutive weeks in which the employee is given no work. [1999, c. 376, §1 (NEW).]

[ 1999, c. 376, §1 (NEW) .]

**2**. **Determination.** A representative designated by the commissioner, and in this chapter referred to as a deputy, shall promptly examine the first claim filed by a claimant in each benefit year and shall determine the weekly benefit amount and maximum benefit amount potentially payable to the claimant during that benefit year in accordance with section 1192, subsection 5.

The deputy shall promptly examine all subsequent claims filed and, on the basis of facts, shall determine whether or not that claim is valid with respect to sections 1192 and 1193, other than section 1192, subsection 5, or shall refer that claim or any question involved in the claim to the Division of Administrative Hearings or to the commission, which shall make a determination with respect to the claim in accordance with the procedure described in subsection 3, except that in any case in which the payment or denial of benefits is subject to section 1193, subsection 4, the deputy shall promptly transmit a report with respect to that subsection to the Director of Unemployment Compensation upon the basis of which the director shall notify appropriate deputies as to the applicability of that subsection.

The deputy shall determine in accordance with section 1221, subsection 3, paragraph A, the proper employer's experience rating record, if any, against which benefits of an eligible individual must be charged, if and when paid.

The deputy shall promptly notify the claimant and any other interested party of the determinations and reasons for the determinations. Subject to subsection 11, unless the claimant or any such interested party, within 15 calendar days after that notification was mailed to the claimant's last known address, files an appeal from that determination, that determination is final, except that the period within which an appeal may be filed may be extended, for a period not to exceed an additional 15 calendar days, for good cause shown. If new evidence or pertinent facts that would alter that determination become known to the deputy prior to the date that determination becomes final, a redetermination is authorized, but that redetermination must be mailed before the original determination becomes final.

If an employer's separation report for an employee is not received by the office specified on the separation report within 10 days after that report was requested, the claim must be adjudicated on the basis of information at hand. If the employer's separation report containing possible disqualifying information is received after the 10-day period and the claimant is denied benefits by a revised deputy's decision, benefits paid prior to the date of the revised decision do not constitute an overpayment of benefits. Any benefits paid after the date of the revised decision constitute an overpayment.

If an employer files an amended separation report or otherwise raises a new issue as to the employee's eligibility or changes the wages or weeks used in determining benefits that results in a denial of benefits or a reduction of the weekly benefit amount, the benefits paid prior to the date the determination is mailed do not constitute an overpayment. Any benefits received after that date to which the claimant is not entitled pursuant to a new determination based on that new employer information constitute an overpayment.

If, during the period a claimant is receiving benefits, new information or a new issue arises concerning the claimant's eligibility for benefits or which affects the claimant's weekly benefit amount, benefits may not be withheld until a determination is made on the issue. Before a determination is made, written notice shall be mailed to the claimant and other interested parties, which must include the issue to be decided, the law upon which it is based, any factual allegations known to the bureau, the right to a fact-finding interview, the date and location of the scheduled interview and the conduct of the interview and appeal. The fact-finding interview must be scheduled not less than 5 days nor more than 14 days after the notice is mailed. The bureau shall include in the notice a statement notifying the claimant that any benefits paid prior to the determination may be an overpayment under applicable law and recoverable by the bureau if it is later determined that the claimant was not entitled to the benefits. If the claimant does not appear for the scheduled interview, the deputy shall make a determination on the basis of available evidence. The deputy shall make a prompt determination of the issue based solely on any written statements of interested parties filed with the bureau before the interview, together with the evidence presented by interested parties who personally appeared at the interview. Upon request and notice to all parties at the interview, the deputy may accept corroborative documentary evidence after the interview. In no other case may the deputy base a decision on evidence received after the interview has been held.

A. This subsection does not apply when the claimant reports that, in the week claimed:

(1) The claimant worked and reports a specific amount of earnings for that work;

(2) The claimant worked and had earnings from that work, but does not furnish the amount of earnings;

(3) The claimant reports that the claimant was not able or available for work for a specific portion of the week and there is sufficient information for the deputy to determine that the inability or unavailability for work was for good cause. If the information provided by the claimant indicated unavailability during the claim week, but is not specific as to the amount of time involved, the department shall immediately initiate a fact-finding interview with the individual and make a determination regarding the claimant's weekly benefit amount on the basis of that interview. If the department is not able to conduct an immediate fact-finding interview with the claimant, the notification and fact-finding process described in this subsection must be followed; or

(4) The claimant received a specific amount of other remuneration as described in section 1193, subsection 5. [2003, c. 163, §1 (AMD).]

B. [1999, c. 464, §8 (RP).]

[ 2003, c. 163, §1 (AMD) .]

**3**. **Appeals.** Unless such appeal is withdrawn, the Division of Administrative Hearings after affording the parties reasonable opportunity for fair hearing, shall affirm, modify or set aside the findings of fact and decision of the deputy. The parties shall be then duly notified of the division's decision, together with its reasons therefor, which subject to subsection 11 shall be deemed to be the final decision of the commission unless, within 15 calendar days after that notification was mailed to his last known address, the claimant and employer may appeal to the commission by filing an appeal in accordance with such rules as the commission shall prescribe, provided that the appealing party appeared at the hearing and was given notice of the effect of the failure to appear in writing prior to the hearing.

[ 1987, c. 641, §8 (AMD) .]

**4**. **Appeal tribunals.**

[ 1987, c. 641, §9 (RP) .]

**5**. **Commission review.** The commission may on its own motion affirm, modify or set aside any decision of the Division of Administrative Hearings on the basis of the evidence previously submitted in that case or direct the taking of additional evidence, or may permit any of the parties of that decision to initiate further appeals before it. The commission shall permit such further appeal by any of the parties interested in a decision of the Division of Administrative Hearings and by the deputy whose decision has been overruled or modified by the Division of Administrative Hearings. The commission may remove to itself or transfer to the chief administrative hearing officer or to another administrative hearing officer the proceedings on any claim pending before the Division of Administrative Hearings. Any proceedings so removed to the commission shall be heard in accordance with the requirements in subsection 3. All hearings conducted pursuant to this section may be heard by a quorum of commissioners, as defined in section 1081, subsection 3. The commission shall promptly notify the interested parties of its findings and decisions.

[ 1987, c. 641, §10 (AMD) .]

**6**. **Procedure.** The manner in which disputed claims shall be presented, and the reports thereon required from the claimant and from employers shall be in accordance with regulations prescribed by the commission. The conduct of hearings and appeals shall be in accordance with Title 5, section 8001 et seq.

[ 1977, c. 694, §474 (RPR) .]

**7**. **Witness fees.** Notwithstanding the provisions of Title 5, section 9060, witnesses subpoenaed pursuant to this chapter shall be allowed fees at a rate fixed by the commission to be paid out of the Employment Security Administration Fund, except that no attendance or mileage fee shall be due or payable when a subpoena is issued to compel an employing unit to appear and produce records and reports for the purpose of making a determination as to liability or for the purpose of completing routine reports as provided under this chapter.

[ 1977, c. 694, §475 (AMD) .]

**8**. **Appeals to courts.** Any decision of the commission becomes final 10 days after receipt of written notification and any person aggrieved by the decision may appeal by commencing an action pursuant to Title 5, chapter 375, subchapter VII. The commission must be made a party defendant in any such appeal.

[ 1991, c. 2, §99 (COR) .]

**9**.

[ 1979, c. 541, Pt. A, §182 (RP) .]

**10**. **Determination may be reconsidered; appeal.** The deputy may reconsider a determination with respect to the weekly benefit amount and maximum total amount of benefits for a claimant for any given benefit year, if the deputy finds that an error has occurred or that wages have been erroneously reported, but no such redetermination may be made after one year from the date of the original determination. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination. If the maximum amount of benefits is increased upon that redetermination, an appeal solely with respect to the matters involved in that increase may be filed in the manner and subject to the limitations provided in subsection 2. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to an appeal by claimant with respect to subsequent benefits which may be affected by the redetermination. An appeal may be filed in the manner and subject to the limitations provided in subsection 2.

The deputy may reconsider a benefit payment for any particular week or weeks whenever an error has occurred, but no such redetermination may be made after one year from the date of payment for that week or weeks. Notice of any such redetermination shall be promptly given to the claimant. Subject to subsection 11, unless the claimant files an appeal from that redetermination within 15 calendar days after that redetermination was mailed to the claimant's last known address, the redetermination shall be final, provided that the period within which an appeal may be filed may be extended for a period not to exceed an additional 15 calendar days for good cause shown.

Subject to the same limitations and for the same reasons, the commission may reconsider the determination in any case in which the final decision has been rendered by the Division of Administrative Hearings, the commission or a court, and may apply to the body or court which rendered that final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, that appeal, unless withdrawn, shall be treated as an appeal from the redetermination.

[ 1987, c. 641, §12 (AMD) .]

**11**. **Prompt payment of claims.**

A. Benefits shall be paid promptly in accordance with a determination, reconsidered determination, redetermination, decision of the Division of Administrative Hearings, the commission or a reviewing court under this section upon the issuance of the determination, reconsidered determination, redetermination or decision, regardless of the pendency of the period to apply for reconsideration, file an appeal or petition for judicial review that is provided with respect thereto in this section or the pendency of any such application, filing or petition, unless and until that determination, redetermination or decision has been modified or reversed by a subsequent reconsidered determination, redetermination or decision. In which event, benefits will be paid or denied for weeks of unemployment thereafter in accordance with that reconsidered determination, modified or reversed determination, redetermination or decision. [1987, c. 641, §13 (AMD).]

B. [1981, c. 290, (RP).]

C. If any determination, reconsidered determination, redetermination or decision awarding benefits is finally modified or reversed, any benefits paid to the claimant which would not have been paid under such final decision shall be deemed to be erroneous payments that are not chargeable to the account of any employer. [1971, c. 538, §34 (NEW).]

[ 1987, c. 641, §13 (AMD) .]

**12**. **Collateral estoppel.** Except for proceedings under this chapter, no finding of fact or conclusion of law contained in a decision of a deputy, an administrative hearing officer, the commission, the commissioner or a court, obtained under this chapter, has preclusive effect in any other action or proceeding.

This provision applies to decisions issued on or after July 14, 1990.

[ 1997, c. 293, §5 (AMD) .]

**13**. **Voluntary withdrawal.** A claimant who has filed a claim for benefits under this section may voluntarily withdraw that claim at any time before receiving the benefits. The commissioner shall treat a claimant who has withdrawn a claim under this subsection as not having filed the claim. A claimant may initiate the withdrawal of a claim under this subsection by way of telephone, but the Department of Labor may require a signed withdrawal authorization to verify the withdrawal. Cashing a benefit check relating to the claim is deemed to revoke any withdrawal of that claim.

[ 2003, c. 96, §1 (NEW) .]

SECTION HISTORY
1971, c. 418, (AMD). 1971, c. 538, §§29-34 (AMD). 1973, c. 147, (AMD). 1975, c. 39, (AMD). 1975, c. 227, (AMD). 1975, c. 710, §§2,4 (AMD). 1975, c. 770, §§124,125 (AMD). 1977, c. 460, §5 (AMD). 1977, c. 587, (AMD). 1977, c. 666, §§1,2 (AMD). 1977, c. 694, §§474-477 (AMD). 1979, c. 78, (AMD). 1979, c. 113, (AMD). 1979, c. 541, §A182 (AMD). 1981, c. 145, (AMD). 1981, c. 177, (AMD). 1981, c. 286, §§2,3 (AMD). 1981, c. 290, (AMD). 1981, c. 547, §1 (AMD). 1983, c. 246, (AMD). 1983, c. 305, §6 (AMD). 1983, c. 351, §§18-21 (AMD). 1983, c. 816, §A23 (AMD). 1985, c. 348, §§7,8 (AMD). 1987, c. 365, §2 (AMD). 1987, c. 641, §§7-13 (AMD). 1989, c. 691, (AMD). RR 1991, c. 2, §99 (COR). 1997, c. 293, §5 (AMD). 1999, c. 376, §1 (AMD). 1999, c. 464, §8 (AMD). 2003, c. 96, §1 (AMD). 2003, c. 163, §1 (AMD).

## §1195. EXTENDED BENEFITS

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

**1**. **Definitions.** Notwithstanding any other provisions of this chapter, the following words, as used in this section, shall have the following meanings, unless the context clearly requires otherwise.

A. Exhaustee. "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(1) Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. Chapter 85, in his current benefit year that includes such week; provided that for the purposes of this paragraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages or employment, or both, that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or he may be entitled to regular benefits with respect to future weeks of unemployment, but such benefits are not payable with respect to such week of unemployment by reason of section 1251;

(2) His benefit year having expired prior to such week, has no or insufficient wages or employment, or both, to establish a new benefit year or, subsequent to December 31, 1971, he does not qualify by having sufficient wages or employment, or both, as provided by section 1192, subsection 5, since the beginning of his prior benefit year; and

(3) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, or under such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he shall be considered an exhaustee if the other provisions of this definition are met. [1979, c. 515, §17 (AMD).]

B. Eligibility period. "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. [1971, c. 119, (NEW).]

C. Extended benefit period. "Extended benefit period" means a period which:

(1) Begins with the 3rd week after a week for which there is a state "on" indicator; and

(2) Ends with either of the following weeks, whichever occurs later:

(a) The 3rd week after the first week for which there is a state "off" indicator; or

(b) The 13th consecutive week of such period; provided that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this State. [1981, c. 548, §3 (RPR).]

D. Extended benefits. "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. Chapter 85, payable to an individual under this section for weeks of unemployment in his eligibility period. [1971, c. 119, (NEW).]

E. [1981, c. 548, §4 (RP).]

F. [1981, c. 548, §4 (RP).]

G. Rate of insured unemployment. "Rate of insured unemployment" for purposes of paragraphs H and I means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in this State for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the commissioner on the basis of his reports to the United States Secretary of Labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period. Computations required by this paragraph shall be made by the commissioner, in accordance with regulations prescribed by the United States Secretary of Labor. [1981, c. 698, §118 (AMD).]

H. State "off" indicator. There is a "state 'off' indicator" for this State for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this chapter:

(1) Was less than 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, or

(2) Was less than 4%, except that for weeks beginning after September 25, 1982, the percentage shall be 5%. [1981, c. 548, §5 (AMD).]

I. State "on" indicator. There is a "state 'on' indicator" for this State for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this chapter:

(1) Equaled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; and

(2) Equaled or exceeded 4%, except that for weeks beginning after September 25, 1982, the percentage shall be 5%. [1981, c. 548, §6 (AMD).]

J. Regular benefits. "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. Chapter 85, other than extended benefits. [1971, c. 119, (NEW).]

K. State law. "State law" means the unemployment compensation or employment security law of any state, approved by the United States Secretary of Labor under the Internal Revenue Code of 1954, Section 3304. [1971, c. 119, (NEW).]

L. With respect to benefits for weeks of unemployment beginning after June 1, 1977, the determination of whether there has been a state "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if paragraph I:

(1) Did not contain subparagraph (1) thereof; and

(2) The figure "4" contained in subparagraph (2) thereof were "5;"

except that, notwithstanding any such provision of this subsection, any week for which there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator. For weeks beginning after September 25, 1982, the figure 5 in subparagraph (2) shall be 6. [1981, c. 548, §7 (AMD).]

M. [1977, c. 570, §25 (RP).]

[ 1981, c. 548, §§3, 7 (AMD) .]

**2**. **Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits.** Except when the result would be inconsistent with the other provisions of this subchapter, as provided in the regulations of the commission, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

[ 1971, c. 119, (NEW) .]

**3**. **Eligibility requirements for extended benefits.** An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the deputy finds that with respect to such week:

A. He is an "exhaustee" as defined in subsection 1, paragraph A; [1971, c. 119, (NEW).]

B. He has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and [1981, c. 548, §8 (AMD).]

C. For each individual who files an initial claim for extended benefits after September 25, 1982, he has been paid wages for insured work during his base period equal to at least 1 1/2 times the wages paid in that calendar quarter of his base period in which those wages were highest. [1981, c. 548, §9 (NEW).]

[ 1981, c. 548, §9 (AMD) .]

**3-A**. (TEXT EFFECTIVE ON CONTINGENCY: Not effective if inconsistent with Federal-State Extended Compensation Act of 1970, as amended) **Failure to accept or seek work as grounds for ineligibility.** Notwithstanding subsection 3, an individual is ineligible for payment of extended benefits for any week of unemployment in that individual's eligibility period if the deputy finds that during such period:

A. The individual failed to accept an offer of suitable work, as defined under subsection 3-C, or failed to apply for any suitable work to which the individual was referred by the employment service; or [1993, c. 22, §3 (AMD).]

B. The individual failed to actively engage in seeking work as prescribed under subsection 3-E, unless that individual is not actively engaged in seeking work because that individual is:

(1) Before any court of the United States or any state pursuant to a lawfully issued summons to appear for jury duty; or

(2) Hospitalized for treatment of an emergency or a life-threatening condition. [1993, c. 22, §3 (AMD).]

This subsection is not in effect for the weeks beginning after March 6, 1993 and before January 1, 1995.

This subsection is not in effect if inconsistent with the Federal-State Extended Compensation Act of 1970, as amended.

[ 1993, c. 22, §3 (AMD) .]

**3-B**. **Additional ineligibility.** Any individual who has been found ineligible for extended benefits for reason of the provisions in subsection 3-A shall also be denied benefits beginning with the first day of the week following the week in which that failure occurred and until he has been employed in each of 4 subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than 4 times the extended weekly benefit amount.

[ 1981, c. 228, (NEW) .]

**3-C**. **Definition.** For purposes of this section, the term "suitable work" means, with respect to any individual, any work which is within the individual's capabilities, subject to the following:

A. The gross average weekly remuneration payable for the work must exceed the sum of:

(1) The individual's extended weekly benefit amount as determined under subsection 4; and

(2) The amount, if any, of supplemental unemployment benefits as defined in the United States Internal Revenue Code of 1954, Section 501(c)(17)(D), payable to the individual for that week; [1981, c. 228, (NEW).]

B. The work must pay wages not less than the higher of:

(1) The minimum wage provided by the United States Fair Labor Standards Act of 1938, Section 6(a)(1), without regard to any exemption; or

(2) The applicable state or local minimum wage; and [1981, c. 228, (NEW).]

C. No individual may be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability described in this subsection if:

(1) The position was not offered to the individual in writing or was not listed with the employment service;

(2) The failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section 1193, subsection 3 to the extent that the criteria of suitability in that section are not inconsistent with this subsection; and

(3) The individual furnishes satisfactory evidence to the deputy that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If the evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to that individual shall be made in accordance with the definition of suitable work for regular benefit claimants in section 1193, subsection 3 without regard to the definition specified by this subsection. [1983, c. 305, §7 (AMD).]

[ 1983, c. 305, §7 (AMD) .]

**3-D**. **Work to be in accord with labor standard provisions.** Notwithstanding the provisions of subsection 3 to the contrary, no work may be deemed to be suitable work, for an individual, which does not accord with the labor standard provisions required by the United States Internal Revenue Code of 1954, Section 3304(a)(5) and set forth under section 1193, subsection 3, paragraph B.

[ 1981, c. 228, (NEW) .]

**3-E**. **Actively engaged in seeking work.** For the purposes of subsection 3-A, paragraph B, an individual shall be treated as actively engaged in seeking work during any week if:

A. The individual has engaged in a systematic and sustained effort to obtain work during that week; and [1981, c. 228, (NEW).]

B. The individual furnishes tangible evidence that he has engaged in that effort during that week. [1981, c. 228, (NEW).]

[ 1981, c. 228, (NEW) .]

**3-F**. **Referred to suitable work.** The employment service shall refer any claimant entitled to extended benefits under subsections 3-A to 3-E to any suitable work which meets the criteria prescribed in subsection 3-C.

[ 1981, c. 228, (NEW) .]

**4**. **Weekly extended benefit amount.** The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

[ 1971, c. 119, (NEW) .]

**5**. **Total extended benefit amount.** The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the lesser of the following amounts:

A. Fifty percent of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year; or [1971, c. 119, (NEW).]

B. Thirteen times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year; or [1971, c. 119, (NEW).]

C. Thirty-nine times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid, or deemed paid, to him under this chapter with respect to the benefit year. [1971, c. 119, (NEW).]

Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that the individual would, except for this subsection, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

[ 1981, c. 548, §10 (AMD) .]

**6**. **Experience rating charges.** The state portion of extended benefits paid under this subchapter shall be charged to the General Fund.

[ 1971, c. 119, (NEW) .]

**7**. **Beginning and termination of extended benefit period.** Whenever an extended benefit period is to become effective in this State, or an extended benefit period is to be terminated in this State the commissioner shall make an appropriate public announcement.

[ 1981, c. 548, §11 (AMD) .]

**7-A**. **Cessation of interstate extended benefits.** Payment of extended benefits shall not be made to any individual for any week beginning after June 1, 1981, if extended benefits are payable for that week pursuant to an interstate claim filed in any state under the interstate benefit payment plan, and no extended benefit period is in effect for that week in that state. This subsection shall not apply with respect to the first 2 weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

[ 1981, c. 104, (NEW) .]

**8**. **Administration.** In the administration of the provisions of this section which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the commissioner shall take such action as may be necessary to ensure that the provisions are so interpreted and applied as to meet the requirements of such Federal Act as interpreted by the United States Department of Labor, and to secure to this State the full reimbursement of the federal share of extended and regular benefits paid under this chapter that are reimbursable under the Federal Act.

[ 1977, c. 675, §22 (AMD) .]

**9**. Notwithstanding any other provisions of this chapter, no employer's experience rating account shall be charged, and no employer shall be liable for payments in lieu of contributions, with respect to extended benefit payments which are wholly reimbursed to the State by the Federal Government.

[ 1975, c. 299, §4 (NEW) .]

SECTION HISTORY
1971, c. 119, (NEW). 1973, c. 753, §§1-3 (AMD). 1975, c. 299, §§1-4 (AMD). 1977, c. 247, (AMD). 1977, c. 570, §§23-25 (AMD). 1977, c. 675, §§18-22 (AMD). 1979, c. 127, §163 (AMD). 1979, c. 515, §17 (AMD). 1979, c. 541, §A183 (AMD). 1979, c. 579, §45 (AMD). 1979, c. 651, §§46,47 (AMD). 1981, c. 104, (AMD). 1981, c. 228, (AMD). 1981, c. 548, §§3-11 (AMD). 1981, c. 698, §118 (AMD). 1983, c. 305, §7 (AMD). 1983, c. 491, (AMD). 1993, c. 22, §3 (AMD).

## §1196. EXTENDED BENEFITS FOR DISLOCATED WORKERS IN APPROVED TRAINING; SUNSET AND REVIEW

**1**. **Dislocated worker defined.** As used in this section; section 1043, subsection 5, paragraph B; and section 1191, subsection 4, paragraph A, the term "dislocated worker" means:

A. An individual who:

(1) Has been terminated or laid off from employment as a result of a reduction of operations at the individual's place of employment or who has received a notice of termination or layoff from employment;

[2009, c. 271, §4 (AMD).]

B. An individual who has been terminated or who has received a notice of termination of employment, as a result of any permanent closure of a plant or facility; or [1985, c. 591, §5 (NEW).]

C. An individual who is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which he resides, including any older individual who may have substantial barriers to employment because of his age. [1985, c. 591, §5 (NEW).]

[ 2009, c. 271, §4 (AMD) .]

**2**. **Annual report.** The Commissioner of Labor shall report to the joint standing committee of the Legislature having jurisdiction over labor before March 1st of each year regarding the actions taken under section 1043, subsection 5, paragraph B, and section 1191, subsection 4, paragraph A. The report shall include:

A. The number of persons who receive benefits under those provisions; [1985, c. 591, §5 (NEW).]

B. The average length of time in training for persons who receive benefits under those provisions; [1985, c. 591, §5 (NEW).]

C. The average weekly benefit and average total amount of benefits paid to persons under those provisions; [1985, c. 591, §5 (NEW).]

D. The success rate in placing trainees who receive benefits under those provisions; [2009, c. 271, §5 (AMD).]

E. The total cost of benefits paid under those provisions and the effect on the Unemployment Trust Fund; and [2009, c. 271, §6 (AMD).]

F. The number of persons participating in training while receiving extended unemployment benefits under those provisions during the report year who have previously completed a training program while receiving extended unemployment benefits under those provisions, including the length of time between those enrollments. [2009, c. 271, §7 (NEW).]

[ 2009, c. 271, §§5-7 (AMD) .]

**3**. **Repeal.**

[ 1995, c. 9, §3 (RP) .]

**4**. **Suspension of provisions due to the reserve multiple.**

[ 1995, c. 9, §4 (RP) .]

SECTION HISTORY
1985, c. 591, §5 (NEW). 1987, c. 570, §4 (AMD). 1991, c. 472, §§1,2 (AMD). 1993, c. 3, §1 (AMD). 1993, c. 3, §2 (AFF). 1993, c. 22, §§4,5 (AMD). 1995, c. 9, §§3,4 (AMD). 2009, c. 271, §§4-7 (AMD).

## §1197. SELF-EMPLOYMENT ASSISTANCE PROGRAM

**1**. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Self-employment assistance activities" means activities approved by the commissioner in which an individual participates for the purpose of establishing a business and becoming self-employed. "Self-employment assistance activities" must include, but are not limited to, entrepreneurial training, business counseling and technical assistance. [1993, c. 710, §2 (NEW).]

B. "Self-employment assistance allowance" means an allowance payable, in lieu of regular benefits, from the Unemployment Compensation Fund to an individual who meets the requirements of this section. [1993, c. 710, §2 (NEW).]

C. "Self-employment assistance program" means a program under which an individual who meets the requirements described in subsection 4 is eligible to receive an allowance in lieu of regular benefits for the purpose of assisting that individual in establishing a business and becoming self-employed. [1993, c. 710, §2 (NEW).]

D. "Regular benefits" means benefits payable to an individual under this chapter, including benefits payable to federal civilian employees and to former members of the United States Armed Forces pursuant to the United States Code, Chapter 85, other than additional benefits, extended benefits and extended benefits for dislocated workers. [1993, c. 710, §2 (NEW).]

[ 1993, c. 710, §2 (NEW) .]

**2**. **Weekly amount of self-employment assistance allowance.** The weekly amount of a self-employment assistance allowance payable to an individual under this section is equal to the weekly benefit amount for regular benefits otherwise payable under section 1191, subsection 2, plus any supplemental benefits for dependents payable under section 1191, subsection 6.

[ 1993, c. 710, §2 (NEW) .]

**3**. **Maximum amount of benefits.** The sum of the self-employment assistance allowances paid under this section, excluding supplemental benefits for dependents, and regular benefits paid under this chapter may not exceed the maximum amount of benefits established under section 1191, subsection 4 with respect to any benefit year.

[ 1993, c. 710, §2 (NEW) .]

**4**. **Eligibility.** The following eligibility requirements apply to the payment of a self-employment assistance allowance under this section.

A. An individual may receive a self-employment assistance allowance if that individual:

(1) Is eligible to receive regular benefits or would be eligible to receive regular benefits except for the requirements described in paragraph B;

(2) Is identified by a worker profiling system as an individual likely to exhaust regular benefits;

(3) Has filed an application for participation in a self-employment assistance program within 60 days of filing an initial application for regular benefits and has provided the information the commissioner may prescribe;

(4) Has, at the time the application is filed, a balance of regular benefits equal to at least 18 times the individual's weekly benefits amount and at least 18 weeks remaining in the individual's benefit year;

(5) Has been accepted into a program approved by the commissioner that will provide self-employment assistance activities;

(6) Is participating in self-employment assistance activities;

(7) Is actively engaged on a full-time basis in activities, which may include training, related to establishing a business and becoming self-employed; and

(8) Has filed a weekly claim for the self-employment assistance allowance and provided the information the commissioner prescribes, including a log of self-employment activities. [1993, c. 710, §2 (NEW).]

B. A self-employment assistance allowance is payable to an individual at the same interval, on the same terms and subject to the same conditions as regular benefits except that:

(1) The requirements of section 1192, subsection 3 relating to availability for work and active search for work are not applicable to the individual;

(2) The requirements of section 1193, subsection 3 relating to refusal to accept work are not applicable to the individual;

(3) The requirements of section 1191, subsection 3 and section 1043, subsection 17 relating to self-employment income are not applicable to the individual;

(4) An individual is considered unemployed for the purposes of section 1192; and

(5) An individual who fails to participate in self-employment assistance activities or who fails to actively engage on a full-time basis in activities, which may include training, related to establishing a business and becoming self-employed is denied benefits for the week the failure occurs. [1993, c. 710, §2 (NEW).]

[ 1993, c. 710, §2 (NEW) .]

**5**. **Limitation on number of individuals receiving a self-employment assistance allowance.** The aggregate number of individuals receiving a self-employment assistance allowance at any time may not exceed 5% of the number of individuals receiving regular benefits at that time.

[ 1993, c. 710, §2 (NEW) .]

**6**. **Financing costs of a self-employment assistance allowance.** A self-employment assistance allowance must be charged or assessed to an employer's account in accordance with section 1221. An allowance attributable to the United States Armed Forces or civilian service must be charged to the appropriate federal account.

[ 1993, c. 710, §2 (NEW) .]

**7**. **Effective date and termination date.** This section is effective for the weeks beginning after the date of enactment or after any plan required by the United States Department of Labor is approved, whichever date is later. This section terminates as of the effective date of the withdrawal of approval of any plan required by the United States Department of Labor or as of the week containing the date when federal law no longer authorizes self-employment assistance programs.

[ 1993, c. 710, §2 (NEW) .]

**8**. **Appeal.**

[ 1995, c. 665, Pt. DD, §12 (AFF); 1995, c. 665, Pt. DD, §2 (RP) .]

**8-A**. **Grievance procedure.**

[ 1997, c. 130, §1 (RP) .]

**8-B**. **Appeal of nonacceptance into a self-employment assistance program.** All determinations under this section must be made in writing. A determination that an individual has not been accepted into a program approved by the commissioner that provides self-employment assistance activities may be appealed only as provided in this subsection.

A. A person who receives a determination of nonacceptance into a self-employment assistance program may obtain a review of that determination by a board appointed in accordance with rules adopted under subsection 9. Appeals to the board must be filed, in writing, within 15 calendar days after the

determination is mailed to the individual's last known address. The period within which an appeal may be filed may be extended, for a period not to exceed an additional 15 calendar days, for good cause shown. [1997, c. 130, §2 (NEW).]

B. When an individual requests a review, the board shall promptly investigate and attempt to resolve the complaint informally. If the problem is not resolved to the complainant's satisfaction through this informal process, a hearing by an impartial hearing officer to review the board's decision must be scheduled and conducted in accordance with the Maine Administrative Procedure Act. [1997, c. 130, §2 (NEW).]

B-1. A person aggrieved by the decision of the hearing officer may appeal to the commission by filing an appeal in accordance with rules established by the commission as long as the appealing party participated in the hearing by that hearing officer and was given notice of the effect of the failure to participate in writing prior to the hearing. [2005, c. 39, §1 (NEW).]

C. A person aggrieved by the decision of the commission may appeal by commencing an action pursuant to Title 5, chapter 375, subchapter 7. The Commissioner of Labor must be made a defendant in any such appeal. [2005, c. 39, §2 (AMD).]

[ 2005, c. 39, §§1, 2 (AMD) .]

**9**. **Adopt rules.** The commissioner may adopt rules in accordance with the Maine Administrative Procedure Act to implement a self-employment assistance program, including, but not limited to, criteria for approval of programs that provide self-employment assistance activities, eligibility criteria for acceptance into and participation in these programs and the review and appeal process for determinations of individual eligibility for these programs.

[ 1993, c. 710, §2 (NEW) .]

**10**. **Report.** Annually by March 1st, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over labor matters on the self-employment assistance program. This report must include data on the number of individuals participating in the program and the number of businesses developed under the program, business survival data, the cost of operating the program, compliance with program requirements and data related to business income, the number of employees and wages paid in the new businesses and the incidence and duration of unemployment after business start-up. The report may also include any recommended changes in the program.

[ 1993, c. 710, §2 (NEW) .]

SECTION HISTORY
1993, c. 710, §2 (NEW). 1995, c. 665, §§DD2,3 (AMD). 1995, c. 665, §DD12 (AFF). 1997, c. 130, §§1,2 (AMD). 2005, c. 39, §§1,2 (AMD).

## §1198. WORK-SHARING BENEFITS

**1**. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affected unit" means a specified plant, department, shift or other definable unit consisting of 2 or more eligible employees to which a work-sharing plan applies. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

B. "Commissioner" means the Commissioner of Labor or the commissioner's designee. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

C. "Eligible employee" means an individual who usually works for the eligible employer submitting a work-sharing plan. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

D. "Eligible employer" means a public or private employer who is not delinquent in the payment of contributions or reimbursements or in the reporting of wages. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

E. "Fringe benefits" includes, but is not limited to, health insurance, retirement benefits, paid vacation and holidays, sick leave and similar advantages that are incidents of employment. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

F. "Intermittent employment" means employment that is not continuous but may consist of intervals of weekly work and intervals of no weekly work. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

G. "Seasonal employment" means employment in seasonal industries within the determined seasonal period or periods. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

H. "Seasonal industry" means an industry in which, because of the seasonal nature of the industry, it is customary to operate only during a regularly recurring period or periods of less than 26 weeks in a calendar year and any seasonal industry under section 1251, subsection 1. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

I. [2013, c. 448, §1 (RP).]

J. "Usual weekly hours of work" means the normal hours of work each week for an eligible employee in an affected unit when that unit is operating on a full-time basis, not to exceed 40 hours and not including overtime. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

K. "Work-sharing benefits" means benefits payable to eligible employees in an affected unit under an approved work-sharing plan. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

L. "Work-sharing employer" means an eligible employer with an approved work-sharing plan in effect. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

[ 2013, c. 448, §§1, 2 (AMD) .]

**2**. **Criteria for approval of a work-sharing plan.** An eligible employer wishing to participate in a work-sharing program under this section must submit a signed work-sharing plan to the commissioner for approval. The commissioner shall approve a work-sharing plan if the terms of the employer's written work-sharing plan and implementation plan described in paragraph I attest that they are consistent with employer obligations under applicable federal and state laws and if the following requirements are met:

A. The work-sharing plan identifies the affected unit or units and specifies the effective date of the plan; [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

B. The work-sharing plan identifies the eligible employees in the affected unit or units by name, social security number, usual weekly hours of work, proposed wage and hour reduction and any other information that the commissioner requires; [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

C. The work-sharing plan certifies that the reduction in the usual weekly hours of work is in lieu of layoffs that would have affected at least 10% of the eligible employees in the affected unit or units and that would have resulted in an equivalent reduction in work hours; [2013, c. 448, §3 (AMD).]

D. Under the work-sharing plan the usual weekly hours of work for eligible employees in the affected unit or units are reduced by not less than 10% and not more than 50% and the reduction in hours in each affected unit is spread equally among eligible employees in the affected unit; [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

E. The work-sharing plan specifies the manner in which the fringe benefits of the eligible employees will be affected. If the employer provides health benefits or retirement benefits under a defined benefit plan, the employer must continue to provide the benefits to employees participating in the work-sharing

program as if the workweeks of these employees had not been reduced or to the same extent the benefits are provided to other employees not participating in the work-sharing program; [2013, c. 448, §3 (AMD).]

F. In the case of eligible employees represented by a collective bargaining agent, the work-sharing plan is approved in writing by the collective bargaining agent that covers the affected eligible employees. In the absence of a collective bargaining agent, the work-sharing plan must contain a certification by the eligible employer that the proposed plan, or a summary of the plan, has been made available to each eligible employee in the affected unit; [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

G. A statement that the work-sharing plan will not serve as a subsidy of seasonal employment during the off-season or of intermittent employment is included; [2013, c. 448, §3 (AMD).]

H. The eligible employer agrees to furnish reports relating to the proper conduct of the work-sharing plan and agrees to allow the commissioner or the commissioner's designee or authorized representatives access to all records necessary to verify the plan prior to approval and to monitor and evaluate application of the plan after approval; [2013, c. 448, §3 (AMD).]

I. The work-sharing plan specifies the manner in which the requirements of this subsection will be implemented including a plan for giving notice, when feasible, to an employee whose workweek is to be reduced together with an estimate of the number of layoffs that would have occurred absent the ability of employees to participate in the work-sharing and such other information as the United States Secretary of Labor determines is appropriate; and [2013, c. 448, §3 (NEW).]

J. The eligible employer allows eligible employees to participate, as appropriate, in training, including employer-sponsored training or worker training funded under the federal Workforce Investment Act of 1998, Public Law 105-220, 112 Stat. 936, to enhance job skills if such training has been approved by the commissioner. [2013, c. 448, §3 (NEW).]

[ 2013, c. 448, §3 (AMD) .]

**3**. **Approval or rejection of the work-sharing plan.** The commissioner shall approve or reject a work-sharing plan in writing. The commissioner's decision is final and not subject to appeal. The eligible employer may submit another work-sharing plan for approval, and a determination must be made based upon the new information submitted by the eligible employer.

[ 2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF) .]

**4**. **Effective date and duration of the work-sharing plan.** A work-sharing plan takes effect on the date specified in the plan or on the first Sunday following the date on which the plan is approved by the commissioner, whichever is later. It expires at the end of the 12th full calendar month after its effective date or on the date specified in the plan if that date is earlier, unless the plan is previously revoked by the commissioner. If a plan is revoked by the commissioner, it terminates on the date specified in the written order of revocation.

[ 2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF) .]

**5**. **Review; revocation of approval.** The commissioner shall review the operation of each approved work-sharing plan at least once during the period the plan is in effect to ensure that it complies with the work-sharing plan requirements under subsection 2. The commissioner may revoke approval of a work-sharing plan for good cause.

A. The revocation order must be in writing, state the reason for revocation and specify the date the revocation takes effect. The revocation order is final and not subject to appeal. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

B. Action to revoke the work-sharing plan may be taken at any time by the commissioner on the commissioner's own motion, on the motion of any of the affected unit's eligible employees or on the motion of a collective bargaining agent that covers the affected employees. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

[ 2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF) .]

**6**. **Modification of the work-sharing plan.** An operational approved work-sharing plan may be modified by the eligible employer with the consent of a collective bargaining agent that covers the affected employees, if any, if the modification is not substantial, conforms with the plan approved by the commissioner and is reported promptly to the commissioner by the eligible employer. If the hours of work are increased or decreased substantially beyond the level in the original plan or any other conditions are changed substantially, the commissioner shall approve or disapprove the modifications without changing the expiration date of the original plan. If the substantial modifications do not meet the requirements for approval under subsection 2, the commissioner shall disallow those modifications in writing. The decision of the commissioner is final and not subject to appeal.

[ 2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF) .]

**7**. **Eligibility for work-sharing benefits.** After serving a waiting period as prescribed by the commissioner, an eligible employee is eligible to receive work-sharing benefits with respect to any week only if the commissioner finds that, in addition to meeting other conditions of eligibility for regular benefits under this Title that are not inconsistent with this section:

A. During the week, the eligible employee is employed as a member of an affected unit under an approved work-sharing plan that was approved prior to that week and that is in effect with respect to the week for which work-sharing benefits are claimed; and [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

B. The eligible employee is available and able to work the normal workweek with the work-sharing employer. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

Notwithstanding any other provisions of this chapter, an eligible employee is deemed unemployed in any week for which remuneration is payable to that eligible employee as an eligible employee in an affected unit for less than that eligible employee's normal weekly hours of work as specified under the approved work-sharing plan in effect for the week.

Notwithstanding any other provisions of this Title, an eligible employee may not be denied work-sharing benefits for any week by reason of the application of laws and rules relating to the availability for work and active search for work with an employer other than the work-sharing employer.

[ 2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF) .]

**8**. **Work-sharing benefits.** This subsection governs the payment of work-sharing benefits under this section.

A. The weekly work-sharing benefit amount is the product of the regular weekly benefit amount, including any dependents' allowances, multiplied by the percentage reduction in the eligible employee's usual weekly hours of work as specified in the approved work-sharing plan. If the weekly work-sharing benefit amount is not an exact multiple of $1, the weekly work-sharing benefit amount must be rounded down to the next lower multiple of $1. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

B. An eligible employee may not receive a total of work-sharing benefits and regular unemployment compensation in any benefit year that exceeds the maximum entitlement established for unemployment compensation, nor may an eligible employee be paid work-sharing benefits for more than 52 weeks in any benefit year pursuant to an approved work-sharing plan. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

C. The work-sharing benefits paid must be deducted from the maximum entitlement amount established for an eligible employee's benefit year. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

D. If an eligible employer approves time off and the eligible employee has performed some work during the week, the eligible employee is eligible for work-sharing benefits based on the combined work and paid leave hours for that week. If the eligible employer does not grant time off, the question of availability must be investigated by the commissioner. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

E. If an eligible employee was sick and consequently did not work all the hours offered by the work-sharing employer in a given week, the employee must be denied work-sharing benefits for that week. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

F. Claims for work-sharing benefits must be filed in the same manner as claims for unemployment compensation or as prescribed in rules by the commissioner. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

G. Laws and rules applicable to unemployment compensation claimants apply to work-sharing claimants to the extent that they are not inconsistent with the established work-sharing provisions. An eligible employee who files an initial claim for work-sharing benefits, if eligible for work-sharing benefits, must be provided a monetary determination of entitlement to work-sharing benefits and must serve a waiting period of one week. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

H. If an eligible employee works in the same week for a work-sharing employer and an employer other than the work-sharing employer, the eligible employee's work-sharing benefits must be computed in the same manner as if the eligible employee worked solely with the work-sharing employer, except that if the eligible employee is not able to work or is not available for the normal workweek with the work-sharing employer, work-sharing benefits may not be paid to that eligible employee for that week. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

I. An eligible employee who does not work during a week for the work-sharing employer and is otherwise eligible must be paid the full weekly unemployment compensation amount. That week is not counted as a week for which work-sharing benefits were received. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

J. An eligible employee who does not work for the work-sharing employer during a week but works for another employer and is otherwise eligible must be paid benefits for that week under the partial unemployment compensation provisions of this chapter. That week is not counted as a week for which work-sharing benefits were received. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

K. Nothing in this section precludes an otherwise eligible employee from receiving total or partial unemployment benefits when the eligible employee's work-sharing benefits have been exhausted. [2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF).]

[ 2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF) .]

**9**. **Benefit charges.** Notwithstanding any other provisions of this Title, work-sharing benefits are charged to the account of the work-sharing employer. Employers liable for payments in lieu of contributions must reimburse the Unemployment Compensation Fund for the full amount of work-sharing benefits paid to their employees under an approved work-sharing plan.

[ 2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF) .]

**10**. **Extended benefits.** An individual who has received all of the unemployment compensation or combined unemployment compensation and work-sharing benefits available in a benefit year is considered an exhaustee for purposes of extended benefits, as provided in section 1043, subsection 5, paragraph B, and, if otherwise eligible under that paragraph, is eligible to receive extended benefits.

[ 2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF) .]

**11**. **Rules.** The commissioner shall adopt rules to implement this section. Those rules are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[ 2011, c. 91, §1 (NEW); 2011, c. 91, §3 (AFF) .]

**12**. **Repeal.**

[ 2013, c. 448, §4 (RP) .]

SECTION HISTORY
2011, c. 91, §1 (NEW). 2011, c. 91, §3 (AFF). 2013, c. 448, §§1-4 (AMD).

## Subchapter 7: EMPLOYER'S CONTRIBUTIONS AND COVERAGE

## §1221. PAYMENTS; RATES; AMOUNTS

**1**. **Payment.**

A. Contributions accrue and become payable by each employer subject to this chapter, other than those liable for payments in lieu of contributions, for each calendar year in which the employer is subject to this chapter, with respect to wages for employment, as defined in section 1043, subsection 11. These contributions become due and must be paid by each employer to the bureau for the fund on or before the last day of the month following the close of the calendar quarter to which the contributions relate and may not be deducted, in whole or in part, from the wages of the employees. [1995, c. 657, §3 (AMD); 1995, c. 657, §10 (AFF).]

B. In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to 1/2¢ or more, in which case it shall be increased to 1.

[ 1995, c. 657, §3 (AMD); 1995, c. 657, §10 (AFF) .]

**2**. **Rate of contribution.** Each employer subject to this chapter, other than those liable for payments in lieu of contributions, shall pay contributions at the rate of 5.4% of the wages paid by him with respect to employment during each calendar year, except as otherwise prescribed in subsection 4.

A. [1985, c. 348, §9 (RP).]

B. [1983, c. 16, (NEW); T. 26, §1221, sub-§2, ¶B (RP).]

C. Each employer subject to this chapter, other than those liable for payments in lieu of contributions, shall pay, in addition to the contribution rate as prescribed in subsection 4, 7/10 of 1% of the wages paid by the employer with respect to employment during the calendar year 1993, 8/10 of 1% of the wages paid by the employer with respect to employment during the calendar year 1994 and 4/10 of 1% of the wages paid by the employer with respect to employment during calendar years 1995, 1996, 1997, 1998 and 1999. [1997, c. 745, §2 (AMD).]

[ 1997, c. 745, §2 (AMD) .]

**3**. **Experience rating record.**

A. At the time the status of an employing unit is ascertained to be that of an employer, the commissioner shall establish and maintain, until the employer status is terminated, for the employer an experience rating record, to which are credited all the contributions that the employer pays on the employer's own behalf. This chapter may not be construed to grant any employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund. Benefits paid to an eligible individual under the Maine Employment Security Law must be charged against the experience rating record of the claimant's most recent subject employer or to the General Fund if the otherwise chargeable experience rating record is that of an employer whose status as such has been terminated; except that no charge may be made to an individual employer but must be made to the General Fund if the commission finds that:

(1) The claimant's separation from the claimant's last employer was for misconduct in connection with the claimant's employment or was voluntary without good cause attributable to the employer;

(2) The claimant has refused to accept reemployment in suitable work when offered by a previous employer, without good cause attributable to the employer;

(3) Benefits paid are not chargeable against any employer's experience rating record in accordance with section 1194, subsection 11, paragraphs B and C;

(5) Reimbursements are made to a state, the Virgin Islands or Canada for benefits paid to a claimant under a reciprocal benefits arrangement as authorized in section 1082, subsection 12, as long as the wages of the claimant transferred to the other state, the Virgin Islands or Canada under such an arrangement are less than the amount of wages for insured work required for benefit purposes by section 1192, subsection 5;

(6) The claimant was hired by the claimant's last employer to fill a position left open by a Legislator given a leave of absence under chapter 7, subchapter 5-A, and the claimant's separation from this employer was because the employer restored the Legislator to the position after the Legislator's leave of absence as required by chapter 7, subchapter 5-A;

(7) The claimant was hired by the claimant's last employer to fill a position left open by an individual who left to enter active duty in the United States military, and the claimant's separation from this employer was because the employer restored the military serviceperson to the person's former employment upon separation from military service; or

(8) The claimant was hired by the claimant's last employer to fill a position left open by an individual given a leave of absence for family medical leave provided under Maine or federal law, and the claimant's separation from this employer was because the employer restored the individual to the position at the completion of the leave. [2013, c. 175, §1 (AMD).]

A-1. [1989, c. 363, §2 (RP).]

A-2. No charge shall be made to an individual employer or governmental entity for benefits paid to any individual whose base-period wages include wages for previously uncovered services as defined in section 1043, subsection 19, paragraph C to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of PL 94-566. No charge shall be made to an employer or governmental entity for benefits paid to any individual if eligibility for such benefits would not have been established but for the use of wages paid for previously uncovered services. [1977, c. 570, §26 (NEW).]

B. The commissioner shall classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their "experience rating records" and shall submit in his annual report to the Governor, the results of the actual experience in payment of contributions on behalf of the individual employers and with respect to benefits charged to their "experience rating records" together with the recommendations relative to the advisability of the continuance of the rates based on benefit experience. [1979, c. 541, Pt. A, §184 (AMD).]

C. [2011, c. 499, §1 (AMD); T. 26, §1221, sub-3, ¶C (RP).]

C-1. Beginning March 14, 2014, for the purposes of paragraph A, the experience rating record of the most recent subject employer may not be charged with benefits paid to a claimant whose work record with such employer totaled 5 consecutive weeks or less of total or partial employment, but in such case the most recent subject employer with whom the claimant's work record exceeded 5 consecutive weeks of total or partial employment must be charged, if such employer would have otherwise been chargeable had not subsequent employment intervened. [2011, c. 499, §2 (NEW); 2011, c. 499, §4 (AFF).]

D. This subsection shall apply only to employers subject to payment of contributions as provided in subsections 1 and 2. [1971, c. 538, §37 (NEW).]

E. An employer's experience rating record may not be relieved of charges relating to an erroneous payment from the fund if the bureau determines that:

(1) The erroneous payment was made because the employer or agent of the employer was at fault for failing to respond timely or adequately to a written or electronic request from the bureau for information relating to the claim for unemployment compensation; and

(2) The employer or agent of the employer has established a pattern of failing to respond timely or adequately to written or electronic requests from the bureau for information relating to claims for unemployment compensation.

A determination of the bureau not to relieve charges pursuant to this paragraph is subject to appeal as other determinations of the bureau with respect to the charging of employers' experience rating records. [2013, c. 314, §3 (NEW); 2013, c. 314, §6 (AFF).]

[ 2013, c. 175, §1 (AMD); 2013, c. 314, §3 (AMD); 2013, c. 314, §6 (AFF) .]

**4**. **Employer's experience classifications.** The commissioner shall compute annually contribution rates for each employer based on his own experience rating record and shall designate a contribution rate schedule.

A. The standard rate of contributions shall be 5.4%. No contributing employer's rate may be varied from the standard rate, unless and until his experience rating record has been chargeable with benefits throughout the 24-consecutive-calendar-month period ending on the computation date applicable to such year; each contributing employer newly subject to this chapter shall pay contributions at the average contribution rate, rounded to the next higher 1/10 of 1%, on the taxable wages reported by contributing employers for the 12-month period immediately preceding the last computation date, provided such rate may not exceed 3.0% nor be less than 1%; provided that, with respect to the rate year beginning January 1, 1986, and each rate year thereafter, the rate shall not exceed 4.0% nor be less than 1% and until such time as his experience rating record has been chargeable with benefits throughout the 24-consecutive-calendar-month period ending on the computation date applicable to such year, and for rate years thereafter his contribution rate shall be determined in accordance with subsections 3 and 4. [1985, c. 348, §10 (AMD).]

B. Subject to paragraph A, each employer's contribution rate for the 12-month period commencing January 1st of each year is based upon the employer's experience rating record and determined from the employer's reserve ratio, which is the percent obtained by dividing the amount by which, if any, the employer's contributions credited from the time the employer first or most recently became an employer, whichever date is later, and up to and including June 30th of the preceding year, including any part of the employer's contributions due for that year paid on or before July 31st of that year, exceed the employer's benefits charged during the same period, by the employer's average annual payroll for the 36-consecutive-month period ending June 30th of the preceding year. The employer's contribution rate is the percent shown on the line of the following table on which in column A there is indicated the employer's reserve ratio and under the schedule within which the reserve multiple falls as of September 30th of each year. The following table applies for each 12-month period commencing January 1st of each year as

determined by paragraph C. Notwithstanding any other provisions of this paragraph, each employer's contribution rate computed and effective as of July 1, 1981, is for the 6-month period ending December 31, 1981.

| EMPLOYER'S CONTRIBUTION RATE IN PERCENT OF WAGES Employer Reserve Ratio | When Reserve Multiple is: | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Equal to or more than Column A | Less than | over 2.50 | 2.37-2.50 | 2.23-2.36 | 2.09-2.22 | 1.95-2.08 | 1.81-1.94 | 1.67-1.80 | 1.53-1.66 |
| | | Schedules | | | | | | | |
| | A | B | C | D | E | F | G | H | |
| 19.0% and over | 0.5% | 0.6% | 0.7% | 0.8% | 0.9% | 1.0% | 1.1% | 1.2% | |
| 18.0% | 19.0% | 0.6% | 0.7% | 0.8% | 0.9% | 1.0% | 1.1% | 1.2% | 1.3% |
| 17.0% | 18.0% | 0.7% | 0.8% | 0.9% | 1.0% | 1.1% | 1.2% | 1.3% | 1.4% |
| 16.0% | 17.0% | 0.8% | 0.9% | 1.0% | 1.1% | 1.2% | 1.3% | 1.4% | 1.5% |
| 15.0% | 16.0% | 0.9% | 1.0% | 1.1% | 1.2% | 1.3% | 1.4% | 1.5% | 1.6% |
| 14.0% | 15.0% | 1.0% | 1.1% | 1.2% | 1.3% | 1.4% | 1.5% | 1.6% | 1.7% |
| 13.0% | 14.0% | 1.1% | 1.2% | 1.3% | 1.4% | 1.5% | 1.6% | 1.7% | 1.8% |
| 12.0% | 13.0% | 1.2% | 1.3% | 1.4% | 1.5% | 1.6% | 1.7% | 1.8% | 1.9% |
| 11.0% | 12.0% | 1.3% | 1.4% | 1.5% | 1.6% | 1.7% | 1.8% | 1.9% | 2.0% |
| 10.0% | 11.0% | 1.4% | 1.5% | 1.6% | 1.7% | 1.8% | 1.9% | 2.0% | 2.1% |
| 9.0% | 10.0% | 1.5% | 1.6% | 1.7% | 1.8% | 1.9% | 2.0% | 2.1% | 2.2% |
| 8.0% | 9.0% | 1.6% | 1.7% | 1.8% | 1.9% | 2.0% | 2.1% | 2.2% | 2.3% |
| 7.0% | 8.0% | 1.7% | 1.8% | 1.9% | 2.0% | 2.1% | 2.2% | 2.3% | 2.4% |
| 6.0% | 7.0% | 1.8% | 1.9% | 2.0% | 2.1% | 2.2% | 2.3% | 2.4% | 2.5% |
| 5.0% | 6.0% | 1.9% | 2.0% | 2.1% | 2.2% | 2.3% | 2.4% | 2.5% | 2.6% |
| 4.0% | 5.0% | 2.0% | 2.1% | 2.2% | 2.3% | 2.4% | 2.5% | 2.6% | 2.7% |
| 3.0% | 4.0% | 2.2% | 2.3% | 2.4% | 2.5% | 2.6% | 2.7% | 2.8% | 2.9% |
| 2.0% | 3.0% | 2.4% | 2.5% | 2.6% | 2.7% | 2.8% | 2.9% | 3.0% | 3.1% |
| 1.0% | 2.0% | 2.6% | 2.7% | 2.8% | 2.9% | 3.0% | 3.1% | 3.2% | 3.3% |
| .0% | 1.0% | 2.8% | 2.9% | 3.0% | 3.1% | 3.2% | 3.3% | 3.4% | 3.5% |
| -1.0% | .0% | 3.0% | 3.1% | 3.2% | 3.3% | 3.4% | 3.5% | 3.6% | 3.7% |
| -2.0% | -1.0% | 3.1% | 3.2% | 3.3% | 3.4% | 3.5% | 3.6% | 3.7% | 3.8% |
| -3.0% | -2.0% | 3.2% | 3.3% | 3.4% | 3.5% | 3.6% | 3.7% | 3.8% | 3.9% |
| -4.0% | -3.0% | 3.3% | 3.4% | 3.5% | 3.6% | 3.7% | 3.8% | 3.9% | 4.0% |
| -5.0% | -4.0% | 3.4% | 3.5% | 3.6% | 3.7% | 3.8% | 3.9% | 4.0% | 4.1% |
| -6.0% | -5.0% | 3.5% | 3.6% | 3.7% | 3.8% | 3.9% | 4.0% | 4.1% | 4.2% |
| -7.0% | -6.0% | 3.6% | 3.7% | 3.8% | 3.9% | 4.0% | 4.1% | 4.2% | 4.3% |
| -8.0% | -7.0% | 3.7% | 3.8% | 3.9% | 4.0% | 4.1% | 4.2% | 4.3% | 4.4% |
| -9.0% | -8.0% | 3.8% | 3.9% | 4.0% | 4.1% | 4.2% | 4.3% | 4.4% | 4.5% |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| -10.0% | -9.0% | 4.0% | 4.1% | 4.2% | 4.3% | 4.4% | 4.5% | 4.6% | 4.7% |
| -11.0% | -10.0% | 4.2% | 4.3% | 4.4% | 4.5% | 4.6% | 4.7% | 4.8% | 4.9% |
| -12.0% | -11.0% | 4.4% | 4.5% | 4.6% | 4.7% | 4.8% | 4.9% | 5.0% | 5.1% |
| under | -12.0% | 6.4% | 6.4% | 6.4% | 6.4% | 6.4% | 6.4% | 6.4% | 6.4% |

| EMPLOYER'S CONTRIBUTION RATE IN PERCENT OF WAGES Employer Reserve Ratio | When Reserve Multiple is: | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Equal to or more than Column A | Less than | 1.39-1.52 | 1.25-1.38 | 1.11-1.24 | .97-1.10 | .83-.96 | .68-.82 | .45-.67 | under .45 |
| | | Schedules | | | | | | | |
| | I | J | K | L | M | N | O | P | |
| 19.0% and over | 1.3% | 1.4% | 1.5% | 1.6% | 1.7% | 1.8% | 1.9% | 2.4% | |
| 18.0% | 19.0% | 1.4% | 1.5% | 1.6% | 1.7% | 1.8% | 1.9% | 2.0% | 2.5% |
| 17.0% | 18.0% | 1.5% | 1.6% | 1.7% | 1.8% | 1.9% | 2.0% | 2.1% | 2.6% |
| 16.0% | 17.0% | 1.6% | 1.7% | 1.8% | 1.9% | 2.0% | 2.1% | 2.2% | 2.7% |
| 15.0% | 16.0% | 1.7% | 1.8% | 1.9% | 2.0% | 2.1% | 2.2% | 2.3% | 2.8% |
| 14.0% | 15.0% | 1.8% | 1.9% | 2.0% | 2.1% | 2.2% | 2.3% | 2.4% | 2.9% |
| 13.0% | 14.0% | 1.9% | 2.0% | 2.1% | 2.2% | 2.3% | 2.4% | 2.5% | 3.0% |
| 12.0% | 13.0% | 2.0% | 2.1% | 2.2% | 2.3% | 2.4% | 2.5% | 2.6% | 3.1% |
| 11.0% | 12.0% | 2.1% | 2.2% | 2.3% | 2.4% | 2.5% | 2.6% | 2.7% | 3.2% |
| 10.0% | 11.0% | 2.2% | 2.3% | 2.4% | 2.5% | 2.5% | 2.7% | 2.8% | 3.3% |
| 9.0% | 10.0% | 2.3% | 2.4% | 2.5% | 2.6% | 2.7% | 2.8% | 2.9% | 3.4% |
| 8.0% | 9.0% | 2.4% | 2.5% | 2.6% | 2.7% | 2.8% | 2.9% | 3.0% | 3.5% |
| 7.0% | 8.0% | 2.5% | 2.6% | 2.7% | 2.8% | 2.9% | 3.0% | 3.1% | 3.6% |
| 6.0% | 7.0% | 2.6% | 2.7% | 2.8% | 2.9% | 3.0% | 3.1% | 3.2% | 3.7% |
| 5.0% | 6.0% | 2.7% | 2.8% | 2.9% | 3.0% | 3.1% | 3.2% | 3.3% | 3.8% |
| 4.0% | 5.0% | 2.8% | 2.9% | 3.0% | 3.1% | 3.2% | 3.3% | 3.4% | 3.9% |
| 3.0% | 4.0% | 3.0% | 3.1% | 3.2% | 3.3% | 3.4% | 3.5% | 3.6% | 4.1% |
| 2.0% | 3.0% | 3.2% | 3.3% | 3.4% | 3.5% | 3.6% | 3.7% | 3.8% | 4.3% |
| 1.0% | 2.0% | 3.4% | 3.5% | 3.6% | 3.7% | 3.8% | 3.9% | 4.0% | 4.5% |
| .0% | 1.0% | 3.6% | 3.7% | 3.8% | 3.9% | 4.0% | 4.1% | 4.2% | 4.7% |
| -1.0% | .0% | 3.8% | 3.9% | 4.0% | 4.1% | 4.2% | 4.3% | 4.4% | 4.9% |
| -2.0% | -1.0% | 3.9% | 4.0% | 4.1% | 4.2% | 4.3% | 4.4% | 4.5% | 5.0% |
| -3.0% | -2.0% | 4.0% | 4.1% | 4.2% | 4.3% | 4.4% | 4.5% | 4.6% | 5.1% |
| -4.0% | -3.0% | 4.1% | 4.2% | 4.3% | 4.4% | 4.5% | 4.6% | 4.7% | 5.2% |
| -5.0% | -4.0% | 4.2% | 4.3% | 4.4% | 4.5% | 4.6% | 4.7% | 4.8% | 5.3% |
| -6.0% | -5.0% | 4.3% | 4.4% | 4.5% | 4.6% | 4.7% | 4.8% | 4.9% | 5.4% |
| -7.0% | -6.0% | 4.4% | 4.5% | 4.6% | 4.7% | 4.8% | 4.9% | 5.0% | 5.5% |
| -8.0% | -7.0% | 4.5% | 4.6% | 4.7% | 4.8% | 4.9% | 5.0% | 5.1% | 5.6% |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| -9.0% | -8.0% | 4.6% | 4.7% | 4.8% | 4.9% | 5.0% | 5.1% | 5.2% | 5.7% |
| -10.0% | -9.0% | 4.8% | 4.9% | 5.0% | 5.1% | 5.2% | 5.3% | 5.4% | 5.9% |
| -11.0% | -10.0% | 5.0% | 5.1% | 5.2% | 5.3% | 5.4% | 5.5% | 5.6% | 6.1% |
| -12.0% | -11.0% | 5.2% | 5.3% | 5.4% | 5.5% | 5.6% | 5.7% | 5.8% | 6.3% |
| under | -12.0% | 6.4% | 6.4% | 6.4% | 6.4% | 6.4% | 6.4% | 6.4% | 6.4% |

[1995, c. 220, §1 (AMD).]

C. To designate the contribution rate schedule to be effective for a rate year, a reserve multiple must be determined. The reserve multiple must be determined by dividing the fund reserve ratio by the composite cost rate. The determination date is September 30th of each calendar year, and the schedule of contribution rates to apply for the 12-month period commencing January 1st, is determined by this reserve multiple, except that for the 1998 and 1999 rate years Schedule P is in effect. [1997, c. 745, §3 (AMD).]

D. As used in this section, the words "contributions credited" and "benefits charged" mean the contributions credited to and the benefits paid and chargeable against the "experience rating record" of an employer as provided in subsection 3, including all contributions due and paid on or before July 31st following the computation date and all benefits paid and chargeable on or before the computation date. [1981, c. 16, §3 (AMD).]

E. The commissioner:

(1) Shall promptly notify each employer of his rate of contributions as determined for the 12-month period commencing January 1st of each year pursuant to this section. The determination shall become conclusive and binding upon the employer unless, within 15 days after the mailing of notice thereof to his last known address or in the absence of mailing, within 15 days after the delivery of the notice, the employer files an application for review and redetermination, setting forth his reasons therefor. If the commission grants the review, the employer shall be promptly notified thereof and shall be granted an opportunity for a hearing, but no employer shall have standing, in any proceedings involving his rate of contributions or contribution liability, to contest the chargeability to his "experience rating record" of any benefits paid in accordance with a determination, redetermination or decision pursuant to section 1194, except upon the ground that the services on the basis of which these benefits were found to be chargeable did not constitute services performed in employment for him and only in the event that he was not a party to the determination, redetermination or decision or to any other proceedings under this chapter in which the character of these services was determined. The employer shall be promptly notified of the commission's denial of his application, or the commission's redetermination, both of which shall be subject to appeal pursuant to Title 5, section 11001 et seq; and

(2) Shall provide each employer at least monthly with a notification of benefits paid and chargeable to his experience rating record and any such notification, in the absence of an application for redetermination filed in such manner and within such period as the commission may prescribe, shall become conclusive and binding upon the employer for all purposes. Such redetermination, made after notice and opportunity for hearing, and the commission's findings of fact in connection therewith, may be introduced in any subsequent administrative or judicial proceedings involving the determination of the rate of contributions of any employer for the 12-month period commencing January 1st of any year and shall be entitled to the same finality as is provided in this section with respect to the findings of fact made by the commission in proceedings to redetermine the contribution rates of an employer. [1981, c. 16, §§4, 5 (AMD).]

F. Notwithstanding any other inconsistent law, any employer, who has been notified of the employer's rate of contribution as required by paragraph E, subparagraph (1), for any year commencing January 1st, may voluntarily make payment of additional contributions, and, upon that payment, is entitled to promptly receive a recomputation and renotification of the employer's contribution rate for that year, including in the calculation the additional contributions so made. Any such additional contribution must be made during the 30-day period following the date of the mailing to the employer of the notice

of the employer's contribution rate in any year, unless, for good cause, the time of payment has been extended by the commissioner for a period not to exceed an additional 10 days. [1993, c. 312, §2 (AMD).]

[ 1997, c. 745, §3 (AMD) .]

**4-A**. **Employer's experience classifications after January 1, 2000.** For rate years commencing on or after January 1, 2000, the commissioner shall compute annually contribution rates for each employer based on the employer's own experience rating record and shall designate a schedule and planned yield.

A. The standard rate of contributions is 5.4%. A contributing employer's rate may not be varied from the standard rate unless the employer's experience rating record has been chargeable with benefits throughout the period of 24 consecutive calendar months ending on the computation date applicable to such a year. A contributing employer newly subject to this chapter shall pay contributions at a rate equal to the greater of the predetermined yield or 1.0% until the employer's experience rating record has been chargeable with benefits throughout the period of 24 consecutive calendar months ending on the computation date applicable to such a year. For rate years thereafter, the employer's contribution rate is determined in accordance with this subsection and subsection 3.

Effective January 1, 2008, the contribution rate must be reduced by the Competitive Skills Scholarship Fund predetermined yield as defined in section 1166, subsection 1, paragraph C, except that a contribution rate under this paragraph may not be reduced below 1%. [2007, c. 352, Pt. A, §2 (AMD).]

B. Subject to paragraph A, an employer's contribution rate for the 12-month period commencing January 1st of each year is based upon the employer's experience rating record and determined from the employer's reserve ratio. The employer's reserve ratio is the percent obtained by dividing the amount, if any, by which the employer's contributions, credited from the time the employer first or most recently became an employer, whichever date is later, up to and including June 30th of the preceding year, including any part of the employer's contributions due for that year paid on or before July 31st of that year, exceed the employer's benefits charged during the same period, by the employer's average annual payroll for the period of 36 consecutive months ending June 30th of the preceding year. The employer's contribution rate is determined under subparagraphs (1) to (8).

(1) The commissioner shall prepare a schedule listing all employers for whom a reserve ratio has been computed pursuant to this paragraph, in the order of their reserve ratios, beginning with the highest ratio. For each employer, the schedule must show:

(a) The amount of the employer's reserve ratio;

(b) The amount of the employer's annual taxable payroll; and

(c) A cumulative total consisting of the amount of the employer's annual taxable payroll plus the amount of the annual taxable payrolls of all other employers preceding the employer on the list.

(2) The commissioner shall segregate employers into contribution categories in accordance with the cumulative totals under subparagraph (1), division (c). The contribution category is determined by the cumulative payroll percentage limits in column B. Each contribution category is identified by the contribution category number in column A that is opposite the figures in column B, which represent the percentage limits of each contribution category. If an employer's taxable payroll falls in more than one contribution category, the employer must be assigned to the lower-numbered contribution category, except that an employer may not be assigned to a higher contribution category than is assigned any other employer with the same reserve ratio.

A B C D E

| Contribution Category | % of Taxable Payrolls From To | Experience Factors | Phase-in Experience Factors 2002 and 2003 | Phase-in Experience Factors 2000 and 2001 | |
|---|---|---|---|---|---|
| 1 | 00.00 | 05.00 | .30 | .38750 | .4750 |
| 2 | 05.01 | 10.00 | .35 | .43125 | .5125 |
| 3 | 10.01 | 15.00 | .40 | .47500 | .5500 |
| 4 | 15.01 | 20.00 | .45 | .51875 | .5875 |
| 5 | 20.01 | 25.00 | .50 | .56250 | .6250 |
| 6 | 25.01 | 30.00 | .55 | .60625 | .6625 |
| 7 | 30.01 | 35.00 | .60 | .65000 | .7000 |
| 8 | 35.01 | 40.00 | .65 | .69375 | .7375 |
| 9 | 40.01 | 45.00 | .70 | .73750 | .7750 |
| 10 | 45.01 | 50.00 | .75 | .78125 | .8125 |
| 11 | 50.01 | 55.00 | .80 | .82500 | .8500 |
| 12 | 55.01 | 60.00 | .90 | .91250 | .9250 |
| 13 | 60.01 | 65.00 | 1.00 | 1.00000 | 1.0000 |
| 14 | 65.01 | 70.00 | 1.10 | 1.08750 | 1.0750 |
| 15 | 70.01 | 75.00 | 1.25 | 1.21875 | 1.1875 |
| 16 | 75.01 | 80.00 | 1.40 | 1.35000 | 1.3000 |
| 17 | 80.01 | 85.00 | 1.60 | 1.52500 | 1.4500 |
| 18 | 85.01 | 90.00 | 1.90 | 1.78750 | 1.6750 |
| 19 | 90.01 | 95.00 | 2.20 | 2.05000 | 1.9000 |
| 20 | 95.01 | 100.00 | 2.60 | 2.40000 | 2.2000 |

(3-A) Beginning January 1, 2008, the commissioner shall compute a reserve multiple to determine the schedule and planned yield in effect for a rate year. The reserve multiple is determined by dividing the fund reserve ratio by the average benefit cost rate. The determination date is October 31st of each calendar year. The schedule and planned yield that apply for the 12-month period commencing on January 1, 2008 and every January 1st thereafter are shown on the line of the following table that corresponds with the applicable reserve multiple in column A.

| A Reserve Multiple | B Schedule | C Planned Yield |
|---|---|---|
| Over 1.58 | A | 0.6% |
| 1.50 - 1.57 | B | 0.7% |
| 1.42 - 1.49 | C | 0.8% |
| 1.33 - 1.41 | D | 0.9% |
| 1.25 - 1.32 | E | 1.0% |
| .50 - 1.24 | F | 1.1% |
| .25 - .49 | G | 1.2% |
| Under .25 | H | 1.3% |

(4) The commissioner shall compute the predetermined yield by multiplying the ratio of total wages to taxable wages for the preceding calendar year by the planned yield.

(5) The commissioner shall determine the contribution rates effective for a rate year by multiplying the predetermined yield by the experience factors for each contribution category. Contribution category 20 in the table in subparagraph (2) must be assigned a contribution rate of at least 5.4%. The employer's experience factor is the percentage shown in column C in the table in subparagraph (2) that corresponds with the employer's contribution category in column A, except that the experience factors in column E must be used to determine the contribution rates for rate years 2000 and 2001 and those in column D must be used for rate years 2002 and 2003.

(6) If, subsequent to the assignment of contribution rates for a rate year, the reserve ratio of an employer is recomputed and changed, the employer must be placed in the position on the schedule prepared pursuant to subparagraph (1) that the employer would have occupied had the corrected reserve ratio been shown on the schedule. The altered position on the schedule does not affect the position of any other employer.

(7) In computing the contribution rates, only the wages reported by employers liable for payment of contributions into the fund and net benefits paid that are charged to an employer's experience rating record or to the fund are considered in the computation of the average benefit cost rate and the ratio of total wages to taxable wages.

(8) Beginning January 1, 2008, all contribution rates must be reduced by the Competitive Skills Scholarship Fund predetermined yield as defined in section 1166, subsection 1, paragraph C, except that contribution category 20 under this paragraph may not be reduced below 5.4%. [2007, c. 352, Pt. A, §2 (AMD).]

C. The commissioner shall:

(1) Promptly notify each employer of the employer's rate of contributions as determined for the 12-month period commencing January 1st of each year. The determination is conclusive and binding upon the employer unless within 30 days after notice of the determination is mailed to the employer's last known address or, in the absence of mailing, within 30 days after the delivery of the notice, the employer files an application for review and redetermination, setting forth the employer's reasons. If the commission grants the review, the employer must be promptly notified and must be granted an opportunity for a hearing. An employer does not have standing in any proceedings involving the employer's rate of contributions or contribution liability to contest the chargeability to the employer's experience rating record of any benefits paid in accordance with a determination, redetermination or decision pursuant to section 1194, except upon the ground that the services for which benefits were found to be chargeable did not constitute services performed in employment for the employer and only when the employer was not a party to the determination, redetermination or decision or to any other proceedings under this chapter in which the character of the services was determined. The employer must be promptly notified of the commission's denial of the employer's application or the commission's redetermination, both of which are subject to appeal pursuant to Title 5, chapter 375, subchapter 7; and

(2) Provide each employer at least monthly with a notification of benefits paid and chargeable to the employer's experience rating record. In the absence of an application for redetermination filed in the manner and within the period prescribed by the commission, a notification is conclusive and binding upon the employer for all purposes. A redetermination made after notice and opportunity for hearing and the commission's findings of fact may be introduced in subsequent administrative or judicial proceedings involving the determination of the rate of contributions of an employer for the 12-month period commencing January 1st of any year and has the same finality as provided in this section with respect to the findings of fact made by the commission in proceedings to redetermine the contribution rates of an employer. [2007, c. 352, Pt. A, §2 (AMD).]

D. Notwithstanding the provisions of this subsection, contributions may not be reduced by the Competitive Skills Scholarship Fund predetermined yield as defined in section 1166, subsection 1, paragraph C for any rate year in which contribution rate schedule H under paragraph B is to be in effect. [2007, c. 352, Pt. A, §2 (NEW).]

[ 2007, c. 352, Pt. A, §2 (AMD) .]

**5**. **Successor transfers of experience and assignment of rates; no common ownership.** The following applies to the assignment of rates and transfers of experience in successor purchases when there is substantially no common ownership, management or control between purchaser and predecessor.

A. Effective as of the date on which the business was acquired:

(1) The executors, administrators, successors or assigns of a new employer who acquires the business of the predecessor employer in toto may acquire the experience rate of that employer with payrolls, contributions and benefits or may be assigned the state average contribution rate, whichever rate is lower; and

(2) The executors, administrators, successors or assigns of an existing employer with an established experience rate who acquires the business of the predecessor employer in toto may acquire the experience rate of that predecessor employer with payrolls, contributions and benefits, which is then blended with the successor's established experience rate to form a new rate, or retain the established experience rate of the successor, whichever is lower. [2015, c. 107, §1 (RPR).]

B. [2007, c. 23, §1 (RP).]

[ 2015, c. 107, §1 (RPR) .]

**5-A**. **Transfers of experience and assignment of rates involving common ownership.** The following applies to the assignment of rates and transfers of experience when there is substantial common ownership, management or control between the successor and predecessor employers.

A. If:

(1) An employer transfers its trade or business, or a portion of its trade or business, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the 2 employers, then the unemployment experience attributable to the transferred trade or business is transferred to the employer to whom the business is transferred. The rates of both employers must be recalculated and made effective immediately upon the date of the transfer of the trade or business. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and such trade or business is performed by the employer to whom the workforce is transferred; and

(2) Following a transfer of experience under subparagraph (1), the commissioner determines that the purpose of the transfer of trade or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved must be combined into a single account and a single rate assigned to such account. [2005, c. 1, §12 (COR).]

B. Whenever a person who is not an employer under this chapter acquires the trade or business of an employer, the unemployment experience of the acquired trade or business is not transferred to that person if the commissioner finds that the person acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions. In such circumstances, the person acquiring the trade or business is assigned the applicable new employer rate under subsection 4-A. In determining whether the trade or business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the commissioner shall consider objective factors that may include the cost of acquiring the trade or business, whether the person continued the business enterprise of the acquired trade or business, how long the business enterprise was continued or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition. [2005, c. 120, §1 (NEW).]

C. If a person knowingly violates or attempts to violate paragraph A or B or any other provision of this chapter related to determining the assignment of a contribution rate or if a person knowingly advises another person in a way that results in a violation of such a provision, the person commits a Class D crime. In addition, the person is subject to the following:

(1) If the person is an employer, then that employer is assigned the highest rate assignable under this chapter for the rate year during which the violation or attempted violation occurred and for the 3 rate years immediately following that rate year, except that, if the person's business is already at the highest rate for any year or if the amount of increase in the person's rate would be less than 2% for such year, then a penalty rate of contributions of 2% of taxable wages is imposed for that year; and

(2) If the person is not an employer, that person is subject to a fine of not more than $5,000, which must be deposited in the Special Administrative Expense Fund established under section 1164. [2005, c. 120, §1 (NEW).]

D. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(2) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal Revenue Code of 1986.

(3) "Trade or business" includes the employer's workforce.

(4) "Violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure. [2005, c. 120, §1 (NEW).]

E. The commissioner shall adopt rules to identify the transfer or acquisition of a business for purposes of this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 120, §1 (NEW).]

F. This subsection must be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor. [2005, c. 120, §1 (NEW).]

[ 2015, c. 107, §2 (AMD) .]

**6**. **Definitions.** The following terms, as used in this section, have the following meanings, unless the context otherwise indicates.

A. "Computation date" means June 30th of each calendar year, and the reserve ratio of each employer is determined by the commissioner as of that date. [1999, c. 464, §10 (AMD).]

B. "Effective date" means the date on which the new rates become effective and is January 1st of each calendar year. [1999, c. 464, §10 (AMD).]

C. "Fund reserve ratio" means the percentage obtained by dividing the net balance available for benefits payments as of September 30th of each calendar year by the total wages for the preceding calendar year. [1981, c. 547, §3 (AMD).]

D. "Cost rate" means the percentage obtained by dividing net benefits paid for a calendar year by the total wages for the same period. [1973, c. 563, §3 (RPR).]

E. "Net balance available for benefit payments" means the sum of the balance in the trust fund, the benefit fund and the clearing account after adjustment for outstanding checks and adjustment for funds in transit between either of the funds or the account. [1999, c. 464, §10 (AMD).]

F. "Rate year" means the 12-month period commencing January 1st of each year. [1999, c. 464, §10 (AMD).]

G. "Reserve multiple" means a measure of the fund reserve that expresses the current fund reserve ratio as a multiple of the composite cost rate. The reserve multiple must be rounded to 2 decimal places. For rate years that begin on and after January 1, 2000, the "reserve multiple" is a measure of the fund reserve that expresses the current fund reserve ratio as a multiple of the average benefit cost rate. [1999, c. 464, §10 (AMD).]

H. "Total wages" means the aggregate total wages paid in Maine for a calendar year in covered employment by contributing employers, as reported on employer contribution reports. [1973, c. 563, §3 (AMD).]

I. "Composite cost rate" means the arithmetic average of the annual cost rates for the last 15 completed calendar years multiplied by a factor of 1.95. Either the resulting composite rate applies for the reserve multiple calculation or the rate of 2.20, whichever is greater, but in no case may a composite cost rate higher than 2.83 apply. [1999, c. 464, §10 (AMD).]

J. "Average benefit cost rate" means the percentage obtained by averaging the 3 highest cost rates for the last 20 completed calendar years preceding the computation date. The rate is rounded down to the nearest 0.1%. [1999, c. 464, §10 (NEW).]

K. "Planned yield" means the percentage of total wages determined by the reserve multiple for the rate year in accordance with the table in subsection 4-A, paragraph B, subparagraph (3). [1999, c. 464, §10 (NEW).]

L. "Ratio of total wages to taxable wages" means the factor obtained by dividing total wages for the preceding calendar year by taxable wages for the same period, except that a ratio of total wages to taxable wages equal to 2.4 must be used to determine the contribution rates effective for rate year 2000 and a ratio equal to 2.5 must be used to determine the contribution rates effective for rate year 2001. [1999, c. 464, §10 (NEW).]

M. "Predetermined yield" means the amount determined by multiplying the ratio of total wages to taxable wages by the planned yield. The predetermined yield is rounded up to the nearest 0.01% and is the calculated average contribution rate for the rate year. [1999, c. 464, §10 (NEW).]

N. "Experience factors" means the weights in subsection 4-A, paragraph B, subparagraph (2) assigned to the contribution categories and used to calculate the contribution rates. [1999, c. 464, §10 (NEW).]

O. "Contributions credited" means the contributions credited to the experience rating record of an employer as provided in subsection 3, including all contributions due and paid on or before July 31st following the computation date. [1999, c. 464, §10 (NEW).]

P. "Benefits charged" means the benefits paid and charged against the experience rating record of an employer as provided in subsection 3, including all benefits paid and charged on or before the computation date. [1999, c. 464, §10 (NEW).]

Q. "Erroneous payment" means a payment that would not have been made but for the failure by the employer or agent of the employer to respond timely or adequately to a written or electronic request from the bureau for information relating to a claim for unemployment compensation. [2013, c. 314, §4 (NEW).]

R. "Pattern of failing" means repeated documented instances of failure on the part of the employer or agent of the employer to respond timely or adequately to a written or electronic request from the bureau for information relating to a claim for unemployment compensation, taking into consideration the number of instances of failure in relation to the total number of requests. An employer or agent of the employer that fails to respond timely or adequately to a written or electronic request from the bureau for information relating to a claim for unemployment compensation may not be determined to have engaged in a pattern of failing if the number of instances of failure during the year prior to a request is fewer than 2 or less than 2% of requests, whichever is greater. [2013, c. 314, §5 (NEW).]

[ 2013, c. 314, §§4, 5 (AMD) .]

7. **Period of time to compute rates.** The commissioner shall have from July 1st to December 31st of each calendar year for the purpose of computing the rates of each employer entitled to the benefits of this section.

[ 1981, c. 16, §10 (AMD) .]

**8**. **Effective date; definition.**

[ 1973, c. 563, §4 (RP) .]

**9**. **Contributions paid in error to another state.** Contributions due under this chapter with respect to wages for insured work shall for the purpose of this section be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal employment security law if payment into the fund of such contributions is made on such terms as the commissioner finds will be fair and reasonable as to all affected interests. Payments to the fund under this subsection shall be deemed to be contributions for purposes of this section.

[ 1977, c. 675, §27 (AMD) .]

**10**. **Liability for contributions and election of reimbursement.** Benefits paid to employees of nonprofit organizations and governmental entities shall be financed in accordance with this subsection. For the purpose of this subsection a nonprofit organization is an organization, or group of organizations, described in section 501(c)(3) of the U.S. Internal Revenue Code which is exempt from income tax under section 501(a) of such code. A nonprofit organization shall pay contributions as provided in subsections 1 and 2, unless it elects in accordance with this subsection to pay to the bureau for the unemployment compensation fund, in lieu of such contributions, an amount equal to the amount of regular benefits and of 1/2 of the extended benefits paid that are attributable to service in the employ of such employer. For the purposes of this subsection, a governmental entity is an employing unit as defined in section 1043, subsection 10 for which services in employment as defined in section 1043, subsection 11, paragraph A-1, subparagraph (1), are performed. A governmental entity shall pay contributions as provided in subsections 1 and 2, unless it elects to pay to the bureau, in lieu of contributions, an amount equal to the amount of regular benefits and of 1/2 of extended benefits paid, except that for weeks of unemployment beginning after December 31, 1978, governmental entities shall pay an amount equal to all of the extended benefits paid in addition to all amounts of regular benefits paid to individuals that are attributable to service in the employ of such governmental entities.

A. Any nonprofit organization that becomes subject to this chapter after January 1, 1972 may elect to become liable for payments in lieu of contributions for a period of 2 calendar years beginning with the date on which such subjectivity begins by filing a written notice of its election with the bureau not later than 30 days immediately following the date of determination of its subjectivity. Any nonprofit organization or governmental entity subject to this chapter on or after January 1, 1978, may elect to become liable for payments in lieu of contributions for a period of not less than one calendar year beginning with the date on which such subjectivity begins by filing a written notice of its election with the bureau not later than 30 days immediately following the date of determination of its subjectivity. Any nonprofit organization or governmental entity that makes an election in accordance with this paragraph will continue to be liable for payments in lieu of contributions, until it files with the bureau a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which such termination is first effective. [1997, c. 293, §6 (AMD).]

B. Any employing unit that has become an employer pursuant to section 1043, subsection 9, paragraph H or I and has been paying contributions under this chapter may change to a reimbursable basis by filing with the bureau not later than 30 days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. The election may not be terminable by the employer for that and the next calendar year. [1995, c. 220, §2 (AMD).]

C. If any employer who has elected to make payments in lieu of contributions is delinquent in making payments as required under this subsection, the bureau may terminate such employer's election to make payments in lieu of contributions as of the beginning of the next calendar year, and such termination shall be effective for that and the next calendar year and such employer shall be liable for contributions until an election of reimbursements is filed pursuant to paragraph B. [1979, c. 651, §44 (AMD).]

D. The bureau may for good cause extend the period within which a notice of election or a notice of termination must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1971. [1979, c. 651, §44 (AMD).]

E. The Commissioner of Labor, in accordance with such regulations as the commission may prescribe, shall notify each such employer of any determination which is made of its status as an employer and of the effective date of any election which it makes and any termination of such election. Such determination shall be subject to reconsideration, appeal and review in accordance with section 1082, subsection 14. [1981, c. 168, §25 (AMD).]

F. Any nonprofit organization, or governmental entity, which has been liable for payments in lieu of contributions whose election to make payments in lieu of contributions terminates under paragraphs A or C, shall pay contributions at the rate established for employers newly subject to this chapter as provided by subsection 4, paragraph A until such time as his experience rating record has been chargeable with benefits throughout the 24-consecutive-calendar-month period ending on the computation date applicable to such year, and for rate years thereafter his contribution rate shall be determined in accordance with subsections 3 and 4. [1977, c. 570, §30 (AMD).]

G. Any employer or governmental entity who elects to make payments in lieu of contributions into the unemployment compensation fund as provided in this section shall not be liable to make such payments with respect to benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in section 1043, subsection 19, paragraph C to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of PL 94-566. No employer or governmental entity will be liable for payment in lieu of contributions for weekly benefits paid or the maximum amount paid to any individual if eligibility for such benefits would not have been established, but for the use of wages paid for previously uncovered services. [1977, c. 570, §31 (NEW).]

[ 1997, c. 293, §6 (AMD) .]

**11**. **Reimbursement payments in lieu of contributions.** Reimbursement payments in lieu of contributions shall be made in accordance with this subsection.

A. At the end of each period as determined by regulation, the commissioner shall assess each employer or governmental entity who has elected to make payments in lieu of contributions an amount as provided in subsection 10. [1983, c. 351, §23 (AMD).]

B. Payment of any assessment rendered under paragraph A shall be made not later than 30 days after such assessment was mailed to the last known address of such employer or governmental entity, unless there has been an application for redetermination in accordance with paragraph D. [1977, c. 570, §32 (AMD).]

C. Payments made by an employer or governmental entity under this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of such employer or governmental entity. [1977, c. 570, §32 (AMD).]

D. The amount due specified in any assessment from the commissioner shall be conclusive on the employer or governmental entity, unless not later than 15 days after the assessment was mailed to the last known address, the employer or governmental entity files an application for redetermination by the commission setting forth the grounds for such application. [1979, c. 651, §28 (AMD).]

E. Past-due payments of amounts in lieu of contributions are subject to the same interest, penalties and collection provisions that, pursuant to section 1225, subsections 3 and 4, sections 1229, 1230 and 1231 apply to past-due contributions. [1997, c. 293, §7 (AMD).]

F. The commissioner shall promptly review and reconsider the amount due specified in the assessment and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination is conclusive on the employer or governmental entity unless the employer or governmental entity files an appeal in accordance with Title 5, chapter 375, subchapter VII. [1997, c. 293, §8 (AMD).]

G. Refunds of payments in lieu of contributions or interest thereon shall be subject to the same provision that, pursuant to section 1225, subsection 5, applies to refunds of contributions or interest thereon. [1975, c. 462, §7 (AMD).]

[ 1997, c. 293, §§7, 8 (AMD) .]

**12**. **Provision of bond or other security.** In the discretion of the commissioner, any employer who elects to become liable for payments in lieu of contributions shall be required within 60 days after the effective date of his election to execute and file with the bureau a surety bond or he may elect to deposit with the bureau money or securities as approved by the commissioner; upon the failure of an employer to comply with this subsection within the time limits imposed, the commissioner may terminate that employer's election to make payments in lieu of contributions and the termination shall be effective for the current and next calendar year. This subsection shall not apply to governmental entities as defined by section 1043, subsection 28, whether they act singularly or in group accounts as allowed by subsection 15.

[ 1983, c. 351, §24 (AMD) .]

**13**. **Payments by the State, any political subdivision, or instrumentalities.** The State or any political subdivision or any of their instrumentalities shall pay contributions in accordance with subsections 1 and 2, unless a governmental entity elects to pay to the bureau for the unemployment compensation fund, in lieu of contributions, an amount equal to the amount of regular benefits and 1/2 of the extended benefits paid that are attributable to service in the employ of such governmental entity, except that with respect to benefits paid for weeks of unemployment after January 1, 1979, such governmental entity must make payments in lieu of contributions as provided in subsection 10.

Each individual branch of State Government and each agency of State Government may be determined an individual entity and elect payment on an individual election to the unemployment compensation fund as provided by this subsection. Political subdivisions of the State shall be individual governmental entities for the purpose of this chapter and shall have the option of paying to the unemployment compensation fund as provided by this subsection.

Payments of the amounts due shall be made in accordance with such regulations as the commission may prescribe.

[ 1979, c. 651, §§30, 47 (AMD) .]

**14**. **Allocation of benefit costs.** Each employer or governmental entity who is liable for payments in lieu of contributions shall pay to the bureau for the fund the amount as provided in subsection 10. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer who is liable for such payments shall be determined in accordance with paragraph A or B.

A. If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer who is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers. [1971, c. 538, §45 (NEW).]

B. If benefits paid to an individual are based on wages paid by 2 or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers. [1971, c. 538, §45 (NEW).]

C. When it has been determined that benefits have been erroneously paid to a claimant and entitlement is based in whole or in part on wages with an employer who is liable for payments in lieu of contributions, such employer's proportionate share of such erroneous payment will be credited at the time recovery is effected. [1971, c. 538, §45 (NEW).]

[ 1979, c. 651, §§44, 47 (AMD) .]

**15**. **Group accounts.** Two or more nonprofit organizations or 2 or more governmental entities that have become liable for payments in lieu of contributions, in accordance with subsections 10 and 13, may file a joint application to the commissioner for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers or governmental entities. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection. Upon approval of the application, the commissioner shall establish a group account for such employers or governmental entities effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than 2 years and thereafter until terminated at the discretion of the commissioner or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The commission shall prescribe such regulations as it deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this subsection, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this subsection by members of the group and the time and manner of such payments.

[ 1981, c. 286, §4 (AMD) .]

**16**. **Transition provision.** Notwithstanding subsections 10, 11, 14 and 15, any nonprofit organization or group of organizations not required to be covered pursuant to section 3309(a)(1) of the Federal Unemployment Tax Act prior to January 1, 1978, that prior to October 20, 1976, paid contributions required by subsection 1, and pursuant to subsection 10, elects, within 30 days after January 1, 1978, to make payments in lieu of contributions shall not be required to make any such payment on account of any regular or extended benefits paid, on the basis of wages paid by such organization to individuals for weeks of unemployment which begin on or after the effective date of such election until the total amount of such benefits equals the amount of the positive balance in the experience rating record of such organization.

[ 1977, c. 570, §37 (NEW) .]

SECTION HISTORY
1965, c. 381, §§19-21 (AMD). 1971, c. 538, §§35-46 (AMD). 1971, c. 620, §11 (AMD). 1973, c. 555, §§15-19 (AMD). 1973, c. 563, §§1-5 (AMD). 1975, c. 462, §§5-7 (AMD). 1975, c. 693, (AMD). 1975, c. 729, (AMD). 1977, c. 285, (AMD). 1977, c. 460, §§6,7 (AMD). 1977, c. 564, §§99-A (AMD). 1977, c. 570, §§26-37 (AMD). 1977, c. 585, §3 (AMD). 1977, c. 675, §§23-28 (AMD). 1977, c. 694, §§478,479 (AMD). 1977, c. 696, §205 (AMD). 1979, c. 541, §A184 (AMD). 1979, c. 579, §§23-29,43- 45 (AMD). 1979, c. 651, §§24-30,44- 47 (AMD). 1981, c. 16, §§1-10 (AMD).

1981, c. 168, §25 (AMD). 1981, c. 286, §4 (AMD). 1981, c. 547, §§2,3 (AMD). 1983, c. 16, (AMD). 1983, c. 128, §2 (AMD). 1983, c. 351, §§22-24 (AMD). 1983, c. 650, §2 (AMD). 1983, c. 753, §§2,3 (AMD). 1985, c. 348, §§9-11 (AMD). 1989, c. 363, §2 (AMD). 1993, c. 22, §§6,7 (AMD). 1993, c. 22, §8 (AFF). 1993, c. 312, §2 (AMD). 1995, c. 9, §5 (AMD). 1995, c. 9, §6 (AFF). 1995, c. 220, §§1,2 (AMD). 1995, c. 657, §3 (AMD). 1995, c. 657, §10 (AFF). 1997, c. 293, §§6-8 (AMD). 1997, c. 380, §§2,3 (AMD). 1997, c. 745, §§2,3 (AMD). 1999, c. 191, §1 (AMD). 1999, c. 464, §§9,10 (AMD). 1999, c. 740, §2 (AMD). RR 2005, c. 1, §12 (COR). 2005, c. 40, §1 (AMD). 2005, c. 120, §1 (AMD). 2007, c. 23, §1 (AMD). 2007, c. 352, Pt. A, §2 (AMD). 2011, c. 499, §§1, 2 (AMD). 2011, c. 499, §4 (AFF). 2013, c. 175, §1 (AMD). 2013, c. 314, §§3-5 (AMD). 2013, c. 314, §6 (AFF). 2015, c. 107, §§1, 2 (AMD).

## §1221-A. EMPLOYEE LEASING COMPANIES

**1**. **Joint and several liability.** A client company is jointly and severally liable for unpaid contributions, interest and penalties due under this chapter from the employee leasing company for wages paid to employees leased to the client company.

[ 1995, c. 221, §1 (AMD) .]

**2**. **Liability for contributions.** Notwithstanding any other provisions of this chapter, during the term of the employee leasing arrangement, an employee leasing company is liable for the payment of contributions, penalties and interest on wages paid to employees leased to a client company, except compensation paid to sole proprietors of or partners in the client company.

[ 1991, c. 468, §3 (NEW); 1991, c. 468, §6 (AFF) .]

**3**. **Reporting requirements.** The employee leasing company shall report and pay all contributions under its state employer identification number, using its contribution rate. The employee leasing company shall keep separate records and submit separate quarterly wage reports for each of its client companies to the bureau.

[ 1991, c. 468, §3 (NEW); 1991, c. 468, §6 (AFF) .]

**4**. **Administration of benefits.** The employee leasing company is responsible for administration of claims for unemployment insurance benefits for the employees leased to each client company.

[ 1991, c. 468, §3 (NEW) .]

**5**. **Surety bond securities.**

[ 1995, c. 221, §2 (RP) .]

**6**. **Limitation on application.** This section does not apply to private employment agencies that provide their employees to employers on a temporary help basis, if the private employment agencies are liable as employers for the payment of contributions on wages paid to those temporary employees.

[ 1991, c. 468, §3 (NEW) .]

**7**. **Client company ceasing to pay wages.** Whenever a client company does not pay wages for a period of 12 consecutive calendar quarters following the latest calendar quarter in which it paid wages, the commissioner shall terminate the client company's account and experience rating record. If the client

company subsequently becomes subject to this section after its account and experience rating record have been terminated, the client company is deemed a new employer for the purposes of this chapter and shall pay contributions at the average contribution rate as defined in section 1221, subsection 4, paragraph A.

[ 1991, c. 468, §3 (NEW) .]

**8**. **Penalty.** A person or an employee leasing company that violates this chapter is subject to a forfeiture of $100 per day for each violation. A corporation, partnership, sole proprietorship or other form of business entity and an officer, director, general partner, agent, representative or employee of any of those types of business entities that knowingly uses or participates in an employee leasing agreement, arrangement or mechanism for the purpose of depriving one or more insurers of premiums or avoiding the calculation of the proper contribution rate for purposes of unemployment contributions commits a Class E crime.

[ 1995, c. 221, §3 (RPR) .]

**9**. **Rebuttable presumption.** When an employee leasing company leases employees to only one client company or when the leasing company and the client company or companies are owned or controlled by the same parties or interests, directly or indirectly, by legally enforceable means or otherwise, there is a rebuttable presumption that the client company or companies entered into an employee leasing arrangement to avoid the calculation of the proper contribution rate for payment of unemployment contributions.

[ 1995, c. 221, §4 (NEW) .]

SECTION HISTORY
1991, c. 468, §3 (NEW). 1991, c. 468, §6 (AFF). 1993, c. 264, §§1,2 (AMD). 1995, c. 221, §§1-4 (AMD).

## §1221-B. TREATMENT OF INDIAN TRIBES

To the extent permitted under federal law, including the Maine Indian Claims Settlement Act, Title 25, United States Code, Chapter 19, Subchapter II, this section governs unemployment contributions and direct reimbursement options for Indian tribes. [2001, c. 381, §1 (NEW).]

**1**. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Employing unit," as defined in this chapter, includes any Indian tribe for which service in employment is performed. [2001, c. 381, §1 (NEW).]

B. "Employment" includes service performed in the employ of an Indian tribe, as defined in the Federal Unemployment Tax Act, 26 United States Code, Chapter 23, Section 3306(u), 2000, referred to in this section as "FUTA," as long as that service is excluded from the definition of employment as defined in 26 United States Code, Section 3306(c) solely by reason of 26 United States Code, Section 3306(c)(7) and is not otherwise excluded from the definition of employment under this chapter. For purposes of this paragraph, the exclusions from employment in section 1043, subsection 11, paragraph F, subparagraph (17), division (i), subdivisions (i), (ii), (iii), (iv) and (v) are applicable to services performed in the employ of an Indian tribe. [2011, c. 691, Pt. A, §29 (AMD).]

C. "Indian tribe" means an Indian tribe or tribal unit, including a subdivision, subsidiary or business enterprise wholly owned by an Indian tribe subject to this chapter. [2001, c. 381, §1 (NEW).]

[ 2011, c. 691, Pt. A, §29 (AMD) .]

**2**. **Benefits.** Benefits based on service in employment are payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter.

[ 2001, c. 381, §1 (NEW) .]

**3**. **Payments in lieu of contributions.** Contributions by Indian tribes for unemployment tax purposes are controlled by this subsection.

A. An Indian tribe shall pay contributions under the same terms and conditions as all other subject employers unless that Indian tribe elects to pay into the fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe. [2001, c. 381, §1 (NEW).]

B. An Indian tribe electing to make payments in lieu of contributions shall make that election in the same manner and under the same conditions as provided in section 1221, subsection 11 for the State and local governments and nonprofit organizations subject to this chapter. An Indian tribe shall determine if reimbursement for benefits paid will be elected by the Indian tribe as a whole, by an individual tribal unit or by a combination of individual tribal units. [2001, c. 381, §1 (NEW).]

C. An Indian tribe or tribal unit must be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions. [2001, c. 381, §1 (NEW).]

D. At the discretion of the commissioner, an Indian tribe that elects to become liable for payments in lieu of contributions shall, within 60 days after the effective date of its election:

(1) Execute and file with the commissioner a surety bond approved by the commissioner; or

(2) Deposit with the commissioner money or securities on the same basis as other employers with the same election option. [2001, c. 381, §1 (NEW).]

[ 2001, c. 381, §1 (NEW) .]

**4**. **Failure to make payments.** An Indian tribe that fails to make the required payment is subject to this subsection.

A. An Indian tribe that fails to make the payments required by this chapter, including assessments of interest and penalty, within 90 days of receipt of the bill loses the option to make payments in lieu of contributions, as described in subsection 3, for the following tax year unless payment in full is received before contribution rates for the next tax year are computed. [2001, c. 381, §1 (NEW).]

B. An Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in paragraph A, regains the option if, after a period of one year, all contributions have been made on time and no contributions, payments in lieu of contributions for benefits paid, interest or penalties remain outstanding. [2001, c. 381, §1 (NEW).]

C. Notwithstanding subsection 1, paragraph B, if the Indian tribe fails to make required payments, including assessments of interest and penalty, after all collection activities considered necessary by the commissioner have been exhausted, services performed for that Indian tribe are not considered employment for purposes of subsection 1, paragraph B. [2001, c. 381, §1 (NEW).]

D. An Indian tribe that loses coverage due to paragraph C may have services performed for that Indian tribe included as employment at the discretion of the commissioner, once all contributions, payments in lieu of contributions, interest and penalties have been paid. [2001, c. 381, §1 (NEW).]

[ 2001, c. 381, §1 (NEW) .]

**5**. **Notices to Indian tribes.** The commissioner shall provide notification in notices of payment and reporting delinquency to Indian tribes that failure to make full payment within the prescribed time frame:

A. Will cause the Indian tribe to be liable for taxes under FUTA; [2001, c. 381, §1 (NEW).]

B. Will cause the Indian tribe to lose the option to make payments in lieu of contributions; and [2001, c. 381, §1 (NEW).]

C. Could cause services in the employ of the Indian tribe to be excepted from employment for purposes of obtaining benefits under the Employment Security Law. [2001, c. 381, §1 (NEW).]

[ 2001, c. 381, §1 (NEW) .]

**6**. **Notices to Federal Government.** If an Indian tribe fails to make payments required under this section, including assessments of interest and penalties, within 90 days of a final notice of delinquency, the commissioner shall notify immediately the United States Internal Revenue Service and the United States Department of Labor.

[ 2001, c. 381, §1 (NEW) .]

**7**. **Extended benefits.** Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the Federal Government must be financed in their entirety by that Indian tribe.

[ 2001, c. 381, §1 (NEW) .]

**8**. **Continuation of coverage.** Unemployment benefits payable to unemployed individuals who performed services in employment for an Indian tribe as defined in this section and who meet the eligibility qualifications under this chapter may not be withheld because the Indian tribe is delinquent in the payment of unemployment contributions or reimbursement payments in lieu of contributions as defined in this chapter.

[ 2001, c. 381, §1 (NEW) .]

SECTION HISTORY
2001, c. 381, §1 (NEW). 2011, c. 691, Pt. A, §29 (AMD).

## §1222. PERIOD, ELECTION AND TERMINATION OF COVERAGE

**1**. **Period of employer's coverage.** Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year.

**2**. **Termination of employer's coverage.**

A. Except as otherwise provided in subsection 3, an employing unit which became an employer under section 1043, subsection 9, paragraph H shall cease to be an employer subject to this chapter as of the first day of January of any calendar year, only if it files with the commissioner, prior to the 31st day of January of such year, a written application for termination of coverage, and the commissioner finds that there were no 20 different days, each day being in a different week within the preceding calendar year, within which such employing unit employed 4 or more individuals in employment subject to this chapter. For the purpose of this subsection, the 2 or more employing units mentioned in section 1043, subsection 9, paragraph B or C or D shall be treated as a single employing unit. [1979, c. 651, §45 (AMD).]

B. The commissioner may upon his own motion terminate coverage of any employer, who became an employer under section 1043, subsection 9, paragraph H, when the commissioner finds that there were no 20 different days, each day being in a different week within the preceding calendar year, within which such employing unit employed 4 or more individuals in employment subject to this chapter; and the commissioner may, upon his own motion terminate the coverage of an employing unit which had become an employer by virtue of subsection 3, as of January 1st of any calendar year when such employing unit has, by virtue of approval of its election to become a subject employer, been such a subject employer for the 2 or more preceding calendar years. [1979, c. 651, §31 (AMD).]

C. Except as otherwise provided in subsection 3, an employing unit which became an employer under section 1043, subsection 9, paragraph A-1, shall cease to be an employer subject to this chapter as of the first day of January of any calendar year, only if it files with the commissioner, prior to the 31st day of January of such year, a written application for termination of coverage, and the commissioner finds that there were no 20 different weeks, within the preceding calendar year, within which such employing unit employed one or more individuals in employment subject to this chapter, and did not pay wages of $1,500 in any calendar quarter. For the purpose of this subsection, the 2 or more employing units mentioned in section 1043, subsection 9, paragraph B or C or D shall be treated as a single employing unit. [1979, c. 651, §45 (AMD).]

D. The commissioner may upon his own motion terminate coverage of any employer when the commissioner finds that there were no 20 different weeks within the preceding calendar year, within which such employing unit employed one or more individuals in employment subject to this chapter and did not pay wages of $1,500 in any calendar quarters; and the commissioner may upon his own motion terminate the coverage of an employing unit which had become an employer by virtue of subsection 3, paragraphs A and B as of January 1st of any calendar year when such employing unit has, by virtue of approval of its election to become a subject employer, been such a subject employer for the 2 or more preceding calendar years. [1979, c. 651, §32 (AMD).]

E. Except as otherwise provided in subsection 3, an employing unit which became an employer under section 1043, subsection 9, paragraph J, shall cease to be an employer subject to this chapter as of the first day of January of any calendar year, only if it files with the commissioner, prior to the 31st day of January of that year, a written application for termination of coverage and the commissioner finds that there were not 20 different days, each day being in a different week within the preceding calendar year, within which that employing unit employed 10 or more individuals in agricultural labor subject to this chapter and did not pay wages of $20,000 to individuals employed in agricultural labor in any calendar quarter. For the purpose of this subsection, the 2 or more employing units mentioned in section 1043, subsection 9, paragraph B, C or D, shall be treated as a single employing unit. [1983, c. 351, §25 (AMD).]

F. The commissioner may terminate coverage of any employer who became an employer under section 1043, subsection 9, paragraph J, when the commissioner finds that there were not 20 different days, each day being in a different week within the preceding calendar year, within which the employing unit employed 10 or more individuals in agricultural labor subject to this chapter and did not pay wages of $20,000 to individuals employed in agricultural labor in any calendar quarter; and the commissioner may terminate coverage of any employer who became an employer under section 1043, subsection 9, paragraph K, when the commissioner finds that the employing unit did not pay wages of $1,000 to individuals employed in domestic service in any calendar quarter of the preceding calendar year. [1983, c. 351, §25 (AMD).]

G. Except as otherwise provided in subsection 3, an employing unit which became an employer under section 1043, subsection 9, paragraph K, shall cease to be an employer subject to this chapter as of the first day of January of any calendar year, only if it files with the commissioner, prior to the 31st day of January of that year, a written application for termination of coverage and the commissioner finds that the employing unit did not pay wages of $1,000 to individuals employed in domestic service in any calendar quarter of the preceding calendar year. For the purpose of this subsection, the 2 or more employing units mentioned in section 1043, subsection 9, paragraph B, C or D, shall be treated as a single employing unit. [1983, c. 351, §25 (AMD).]

[ 1983, c. 351, §25 (AMD) .]

**3. Election and termination of employer's coverage.**

A. An employing unit, not otherwise subject to this chapter, which files with the commissioner its written election to become an employer subject hereto for not less than 2 calendar years, shall, with the written approval of such election by the commissioner, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject

hereto as of January 1st of any calendar year subsequent to such 2 calendar years, only if it files with the commissioner, prior to the 31st day of January of such year, a written application for termination of coverage. [1979, c. 651, §45 (AMD).]

B. Any employing unit, for which services that do not constitute employment as defined in this chapter are performed, may file with the commissioner a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than 2 calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1st of any calendar year subsequent to such 2 calendar years, if not later than January 31st of such year such employing unit has filed with the commissioner an application for termination of coverage. [1979, c. 651, §45 (AMD).]

C. [1977, c. 570, §38 (RP).]

[ 1979, c. 651, §45 (AMD) .]

SECTION HISTORY
1971, c. 538, §§47-49 (AMD). 1977, c. 570, §§38,40 (AMD). 1979, c. 354, §§1,2 (AMD). 1979, c. 579, §§30,31,44 (AMD). 1979, c. 651, §§31,32,45,47 (AMD). 1983, c. 351, §25 (AMD).

## §1223. COLLECTION OF CONTRIBUTIONS

***(REPEALED)***

SECTION HISTORY
1969, c. 186, §2 (AMD). 1973, c. 555, §20 (AMD). 1975, c. 462, §8 (RP).

## §1224. EXEMPT EMPLOYERS TO REPORT ON ACCRUED WAGES

All employers, exempt from the weekly payment of wage law of this State, may be required to report to the commissioner all accrued wages payable for employment during the calendar quarter when filing payroll reports in accordance with section 1082, subsection 13 under such regulations as the commission may prescribe. Nothing in this section shall be construed to make contributions due and payable on any part of such reported wages which have not actually been paid, but wages so reported shall be deemed to be wages paid for unemployment benefit purposes. [1979, c. 651, §33 (AMD).]

SECTION HISTORY
1979, c. 515, §17A (AMD). 1979, c. 579, §32 (AMD). 1979, c. 651, §§33,47 (AMD).

## §1225. ASSESSMENT OF CONTRIBUTIONS, INTEREST, PENALTIES AND FILING FEES

**1**. **Assessment procedure.** If any employer files reports for the purpose of determining the amount of contribution due, but fails to pay any part of the contribution, interest or penalties due thereon as prescribed by the commissioner, or fails to file the reports when due, or files an incorrect or insufficient report, the Director of Unemployment Compensation may assess the contribution and any interest or penalties due on the basis of the information submitted by the employer or on the basis of an estimate as to the amount due and shall give written notice of the assessment to the employer.

[ 1993, c. 312, §3 (AMD) .]

**1-A**. **Liability of employer and certain individuals.** The liability for contributions or fees and the interest or penalties due on contributions are enforceable by assessment and collection, in the manner prescribed in this section, against the employer and against any officer, director or member of that employer who, in that capacity, is responsible for the control or management of the funds or finances of that employer or is responsible for the payment of that employer's contribution.

[ 1999, c. 464, §11 (NEW) .]

**1-B**. **Responsible individual.** Each employer liable for contributions shall inform the commissioner or the commissioner's duly authorized representative, at the time an audit of that employer's account is performed, of the name and position of the individual who generally is responsible for the control or management of that employer's funds or finances and, if different, the individual who is specifically responsible for the collection and paying over of those contributions.

[ 1999, c. 464, §11 (NEW) .]

**2**. **Jeopardy assessment.** If the Director of Unemployment Compensation determines that the collection of any contribution, interest or penalty under this subchapter, as amended, will be jeopardized by delay, the director may immediately assess the contributions, interest or penalties, whether or not the time prescribed by law or any rules issued pursuant to section 1082, subsection 2, for making reports and paying the contributions has expired, and shall give written notice of the assessment to the employer. In these cases, the right to appeal to the commission, as provided in section 1226, is conditioned upon payment of the contributions, interest or penalties so assessed, or upon giving appropriate security to the commissioner for the payment thereof.

[ 1993, c. 312, §3 (AMD) .]

**3**. **Interest on past-due contributions.** Contributions are due and payable on or before the last day of the month following the close of the calendar quarter to which contributions relate. Contributions that are unpaid on the date on which they are due and payable bear interest at the rate determined by the State Tax Assessor as established by Title 36, section 186, from and after the due date, until payment is received by the bureau. If it is shown to the satisfaction of the commissioner that the delinquency arose from reasonable questions of liability under this subchapter, the commissioner, in the commissioner's discretion, may abate part of the interest not to exceed 75% of the total interest. If it is shown to the satisfaction of the commissioner that the delinquency arose through no fault of the employer, an assessment of interest may not be made.

[ 1995, c. 657, §4 (AMD);  1995, c. 657, §10 (AFF) .]

**4**. **Penalty on past-due contributions.** If quarterly contributions are not paid when due, the commissioner shall assess a penalty of 1% of the amount of the unpaid contributions for each month or fraction of a month during which the failure continues, to a maximum in the aggregate of 25% of the unpaid contributions.

[ 1995, c. 657, §4 (AMD);  1995, c. 657, §10 (AFF) .]

**5**. **Refunds.** If, not later than 4 years after the date on which any contributions or interest thereon became due, an employer who has paid the contributions or interest thereon makes application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because that adjustment can not be made, and if the commissioner determines that the contributions or interest or any portion thereof was erroneously collected, the commissioner shall allow the employer to make an adjustment, without interest, in connection with subsequent contribution payments by the employer, or if the adjustment can not be made, the commissioner shall refund that amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the commissioner's own initiative. Any adjustment or refund involving contributions with respect to wages upon the basis of which benefits

have been paid for unemployment must be reduced by the amount of benefits paid. If the commissioner determines that contributions or interest were erroneously paid to this State on wages insured under the employment security law of some other state or of the Federal Government, refund or adjustment thereof may be made without interest, irrespective of the time limits provided in this subsection, on satisfactory proof that contributions or interest on the wages have been paid to the other state or to the Federal Government. Nothing in this chapter or any part of the chapter may be construed to authorize any refund or credit of money due and payable under the law and rule in effect at the time the money was paid.

[ 1993, c. 312, §3 (AMD) .]

**6**. **Limitations on assessment.** Limitations on assessments are governed by this subsection.

A. Notification of assessments must be mailed to the employer not later than 4 years after a report was due or filed, whichever is later. Before the expiration of the time prescribed in this subsection, the commissioner and the employer may consent in writing to an assessment after that time, and the notification of assessment must be mailed within the agreed-upon limitation. [1993, c. 312, §3 (NEW).]

B. Exceptions to paragraph A are as follows.

(1) If, with willful intent to evade the liability imposed by this chapter, a report is not filed or a false report is filed, a notification of an assessment may be mailed to the employer at any time.

(2) The running of the period of limitations for assessment or collection of unemployment compensation contributions against an employer must be stayed for the period of time, plus 365 days, during which an assessment against that person is subject to administrative or judicial review or remains outstanding because that person is subject to bankruptcy proceedings under 11 United States Code. [1993, c. 312, §3 (NEW).]

[ 1993, c. 312, §3 (AMD) .]

**7**. **Filing fees.** Any employer who fails to make and submit reports or pay any contributions or reimbursements, including interest and penalties, when due is liable to the commissioner for any filing fees, including recording lien fees, discharge lien fees and sheriff fees, incurred in collecting the amounts due or in obtaining the reports.

[ 1993, c. 312, §3 (NEW) .]

**8**. **Reasonable cause.** For reasonable cause, the commissioner shall waive or abate any penalty imposed by subsection 4 and section 1082, subsection 13. Reasonable cause includes, but is not limited to, the following:

A. The failure to file or pay resulted directly from erroneous information provided by the Department of Labor; [1995, c. 657, §5 (NEW); 1995, c. 657, §10 (AFF).]

B. The failure to file or pay resulted directly from the death or serious illness of the taxpayer or a member of the taxpayer's immediate family; [1995, c. 657, §5 (NEW); 1995, c. 657, §10 (AFF).]

C. The failure to file or pay resulted directly from a natural disaster; [1995, c. 657, §5 (NEW); 1995, c. 657, §10 (AFF).]

D. The report was filed and paid less than one month late and all of the taxpayer's reports and payments during the preceding 3 years were timely; or [1995, c. 657, §5 (NEW); 1995, c. 657, §10 (AFF).]

E. The amount subject to a penalty is de minimis when considered in relation to the amount otherwise properly paid and the number of employees for whom wages are being reported. [1995, c. 657, §5 (NEW); 1995, c. 657, §10 (AFF).]

The burden of establishing reasonable cause for waiver or abatement is on the taxpayer.

[ 1995, c. 657, §5 (NEW); 1995, c. 657, §10 (AFF) .]

SECTION HISTORY
1975, c. 462, §9 (NEW). 1977, c. 460, §8 (AMD). 1979, c. 106, (AMD). 1979, c. 515, §18 (AMD). 1979, c. 579, §§33-37,44 (AMD). 1979, c. 651, §§34-38,45, 47 (AMD). 1981, c. 552, (AMD). 1983, c. 351, §§26-28 (AMD). 1983, c. 733, (AMD). 1985, c. 348, §12 (AMD). 1993, c. 312, §3 (AMD). 1995, c. 657, §§4,5 (AMD). 1995, c. 657, §10 (AFF). 1999, c. 464, §11 (AMD).

## §1226. APPEAL OF ASSESSMENT

**1**. **Appeal to the commission.**

A. An employer may appeal determinations by the commissioner or the commissioner's designated representatives made under sections 1221, 1222 and 1225, or an assessment made under section 1225, to the commission by filing an appeal, in accordance with regulations that the commission prescribes, within 30 days after notification is mailed to the employer's last known address as it appears in the records of the bureau or, in the absence of such mailing, within 30 days after the notification is delivered. If the employer fails to perfect this appeal, the assessment or determination is final as to law and fact. [1995, c. 657, §6 (AMD); 1995, c. 657, §10 (AFF).]

B. Upon appeal from such assessment or determination the commission shall, after affording the appellant and the commissioner's designated representative a reasonable opportunity for a fair hearing, make finding of facts and render its decision, which may affirm, modify or reverse the action of the designated representative. The conduct of the hearings shall be governed by regulations of the commission consistent with Title 5, section 9051 et seq. The commission shall promptly notify the parties to the proceeding of its finding of facts and its decision. The decision shall be subject to appeal pursuant to Title 5, section 11001 et seq. The commissioner shall have the right to appeal a final decision of the Maine Unemployment Insurance Commission to the Superior Court. [1983, c. 351, §30 (AMD).]

[ 1995, c. 657, §6 (AMD); 1995, c. 657, §10 (AFF) .]

**2**. **Appeal to Superior Court.**

[ 1977, c. 694, §481 (RP) .]

**3**. **Conclusiveness of determination.** Any determination or decision duly made in proceedings under section 1082, subsection 14, or this subchapter, which has become final, shall be binding in any proceedings relating to applications or requests for refunds or credit, insofar as such determination or decision necessarily involves the issue of whether an employing unit constitutes an employer or whether services performed for, or in connection with, the business of such employing unit constitute employment.

[ 1975, c. 462, §9 (NEW) .]

SECTION HISTORY
1975, c. 462, §9 (NEW). 1977, c. 460, §9 (AMD). 1977, c. 694, §§480-481 (AMD). 1979, c. 127, §164 (AMD). 1979, c. 579, §§38,39 (AMD). 1979, c. 651, §§39,40,47 (AMD). 1981, c. 286, §§5,6 (AMD). 1983, c. 351, §§29,30 (AMD). 1995, c. 657, §6 (AMD). 1995, c. 657, §10 (AFF).

## §1227. LIENS

**1**. **Form and effect.** Upon the failure of an employer to pay the amount assessed pursuant to section 1225, the commissioner may file in the registry of deeds of any county a certificate under his official seal, stating the name of the employer; his address; the amount of the contributions and interest or penalties assessed and in default; and that the time in which an appeal is permitted pursuant to section 1226 has expired without the appeal having been taken or that delay will jeopardize collection. When the certificate is duly filed and recorded, the amount of the assessment shall be a lien upon the entire interest of the employer, legal or equitable, in any real or tangible personal property situated within the jurisdiction of the office in which that certificate was filed. A lien obtained in this manner is a lien for taxes and the priority of the lien shall be governed by the laws of this State. The liens shall be subordinate to any real estate mortgage previously recorded as required by law. No lien for contributions or interest shall be valid against one who purchases personal property from the employer in the usual course of his business, in good faith and without actual notice of the lien. The lien may be enforced against any real or personal property by a civil action in the name of the commissioner. The commissioner shall discharge any such lien upon receiving, from any such employer against whose property a lien certificate has been filed, a good and sufficient bond with sureties conditioned upon the payment of the amount of contributions and interest as finally determined, together with any additional amount which may have become due or may have accrued under this chapter and costs of court, if any.

The foregoing remedies shall be in addition to all other remedies.

[ 1987, c. 14, §1 (AMD) .]

**2**. **Filing lien.** Certificates of liens for contributions or interest, or certificates discharging the liens prepared in accordance with this section, must be received, recorded and indexed by registrars of deeds in the same manner as similar instruments are recorded and indexed. The fee to be paid by the commissioner for recording each certificate is the usual and customary fee, which need not be prepaid. This recording fee, along with all other filing fees pursuant to section 1225, subsection 7, is the liability of the employer and must be assessed as part of the lien pursuant to subsection 1.

[ 1993, c. 312, §4 (AMD) .]

**3**. **Enforcement of lien.** After any assessment has become final and rights of appeal exhausted or lost by virtue of failure to exercise those rights, any property, real or personal, upon which a lien has been claimed under this chapter may be sold, after due notice, in conformity with the law applicable to sales of real or personal property on executions issued in personal actions, in connection with which sales the commissioner shall have the same rights, privileges, duties and responsibilities as one in whose favor an execution is issued.

[ 1983, c. 351, §33 (AMD) .]

SECTION HISTORY
1975, c. 462, §9 (NEW). 1977, c. 189, (AMD). 1981, c. 557, §1 (AMD). 1983, c. 351, §§31-33 (AMD). 1987, c. 14, §§1,2 (AMD). 1993, c. 312, §4 (AMD).

## §1228. LIABILITY OF SUCCESSOR

Any individual or organization, including the types of organizations described in section 1043, subsection 10, whether or not an employing unit, which acquires the organization, trade or business or a substantial part of the assets thereof from an employer, shall be liable, in an amount not to exceed the reasonable value of the organization, trade, business or assets acquired, for any contributions or interest due or accrued and unpaid by the employer, and the amount of the liability shall, in addition, be a lien against the property or assets so acquired which shall be prior to all other liens. The lien shall not be valid as against one who acquires from the successor any interest in the property or assets in good faith, for value and without

notice of the lien. Upon written request made after such acquisition is completed, the commissioner shall furnish the successor with a written statement of the amount of contributions and interest due or accrued and unpaid by the employer as of the date of the acquisition and the amount of the liability of the successor or the amount of the lien shall in no event exceed the liability disclosed by the statement. The foregoing remedies shall be in addition to all other existing remedies against the employer or his successor. [1979, c. 651, §45 (AMD).]

SECTION HISTORY
1975, c. 462, §9 (NEW). 1979, c. 579, §44 (AMD). 1979, c. 651, §§45,47 (AMD).

## §1229. COLLECTION BY CIVIL ACTION

If any employer fails to make any payment of contributions, interest or penalties after notice of an assessment under section 1225, subsection 1, and after the assessment has become final as to law and fact, in addition to or alternatively to any other method of collection prescribed in this chapter, the amount due may be collected by civil action in the name of the commissioner and the employer shall pay the costs of those actions. Civil actions brought under this section to collect contributions and interest, or penalties due thereon, from an employer must be heard by the court at the earliest possible date and are entitled to preference upon the calendar of the court over all other civil actions, except petitions for judicial review under this chapter and cases arising under the Maine Workers' Compensation Act of 1992. The foregoing remedies are in addition to all other existing remedies against the employer or the employer's successor. [1993, c. 1, §70 (COR).]

SECTION HISTORY
1975, c. 462, §9 (NEW). 1983, c. 351, §34 (AMD). RR 1993, c. 1, §70 (COR).

## §1230. COLLECTION BY WARRANT

**1**. **Request for warrant.** If any contribution required to be paid and any interest or penalty or both payable to the commissioner under this chapter is not paid when due and has become final as to law and fact under section 1226, the commissioner may, within 3 years thereafter, notify the employer who is liable according to the records of the bureau, specifying the amount due and demanding payment within 12 days after the date the notice is mailed. The notice shall inform the employer that if he does not make the payment as demanded, the commissioner will certify the amount due for collection by warrant as provided in this section. If the employer does not make payment as demanded within the 12-day period or within an extended period which the commissioner may allow, the commissioner may certify to the Attorney General the amount due for collection or file in the office of the clerk of the Superior Court of Kennebec County, or any county, a certificate addressed to the clerk specifying the contribution required to be paid, interest and penalties due, the name and address of the liable employer as it appears on the records of the bureau, the facts whereby the amount has become final as to law and fact and the notice given, and requesting that a warrant be issued against the employer for the contribution required to be paid, together with interest and penalties, as set forth in the certificate, and with costs. If the commissioner has reasonable grounds to believe that the employer may abscond within the 12-day period, the commissioner may, without further notice to the employer, certify to the Attorney General the amount due for collection or file in the office of the clerk of the Superior Court a certificate addressed to the clerk, requesting the immediate issuance of a warrant.

[ 1983, c. 351, §35 (AMD) .]

**2**. **Issuance of warrant.** When the certificate is filed, the clerk of the Superior Court shall issue a warrant in favor of the bureau against the employer for the contribution required to be paid, together with interest and penalties, as set forth in the certificate and with costs. The clerk of the Superior Court shall file the certificate in a separate docket entitled "Special Warrants for Unemployment Compensation Tax." These records are not to become a part of the extended record of the court.

[ 1979, c. 651, §44 (AMD) .]

**3**. **Warrant effective as lien.** An abstract or copy of the warrant may be filed for record in the register of deeds of any county. From the time of the filing, the amount specified in the warrant shall constitute a lien upon all real property and other tangible assets in the county or town owned by the liable employer or acquired by him during the period of the lien. The lien shall have the force, effect and priority of a judgment lien and shall continue for 5 years from the date of recording, unless sooner released or otherwise discharged or extended as prescribed herein. The lien may be extended for an additional 5-year period by filing, for record in the registry of deeds, an abstract or copy of the warrant within the original 5-year period or within 5 years from the date of the last extension of the lien.

[ 1987, c. 14, §3 (AMD) .]

**4**. **Form and effect of warrant.**

A. The warrant has the force and effect of an execution issued upon a judgment in a civil action for the collection of taxes and benefit overpayments and may be in substantially the following form:

"..... (Name of County) SS. -- To the sheriffs of our respective counties or their deputies or any agent of the Commissioner of Labor

Whereas, the Bureau of Unemployment Compensation or the Attorney General have certified that, pursuant to the terms of Title 26, section 1230, subsection 1, or section 1051, subsection 6, of the Revised Statutes, the amount of certain unemployment compensation tax, or benefit overpayment, assessed against ..... of ..... with interest and penalties, has become final as to law and fact, to wit:

| Period | Contributions | Benefit Over payment | Interest | Penalties | Weeks Involved |
|---|---|---|---|---|---|

Interest will accrue at $ .00 per day for each day after .....

Total $ ..... and $ ..... costs of this proceeding, .....

We command you, therefore, that of the money, goods and chattels of said debtor, in your precinct, or the value thereof in money, you cause to be paid and satisfied unto the Bureau of Unemployment Compensation, to satisfy the sums aforesaid and ..... cents more for this warrant, together with your own fees.

Hereof fail not, and make due return of this warrant, with your doings thereon, unto my office within one year from the date hereof.

.....
Clerk of Courts, County of
.....
Date....."

[1995, c. 560, Pt. G, §13 (AMD).]

B. Warrants shall be returnable within one year. New warrants may be issued on any such certificate within 2 years from the return day of the last preceding warrant for sums remaining unsatisfied. Warrants shall be served by the sheriff of any county, or by any of his deputies, or by any agent of the Commissioner of Labor, in the county where the employer or claimant may be found. [1983, c. 351, §36 (AMD).]

C. The remedy provided by this section is in addition to or an alternative to all other remedies given to the commissioner in this chapter. [1983, c. 351, §36 (AMD).]

[ 1995, c. 560, Pt. G, §13 (AMD) .]

SECTION HISTORY
1975, c. 462, §9 (NEW). 1979, c. 579, §§40-43 (AMD). 1979, c. 651, §§41-44,47 (AMD). 1983, c. 351, §§35,36 (AMD). 1987, c. 14, §3 (AMD). 1995, c. 560, §G13 (AMD).

## §1231. PRIORITIES UNDER LEGAL DISSOLUTIONS OR DISTRIBUTIONS

In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims, except claims for wages of not more than $250 to each claimant, earned within 6 months of the commencement of the proceeding. [1975, c. 462, §9 (NEW).]

SECTION HISTORY
1975, c. 462, §9 (NEW).

## §1232. LICENSES

**1**. **Information provided to commissioner.** At the request of the commissioner, every department, board, commission, division, authority, district or other agency of the State issuing or renewing a license or other certificate of authority to conduct a profession, trade or business shall provide to the commissioner, in such form as the commissioner may prescribe, a list of all licenses or certificates of authority issued or renewed by that agency during the preceding calendar year, beginning with calendar year 1993. The list provided to the commissioner must contain the name, address, social security or federal identification number of the licensees and such other identifying information as the commissioner may adopt by rule. Notwithstanding other provisions of law, a person seeking a license or certificate of authority or a renewal shall provide, and the responsible agency shall collect, the information required by the commissioner under this section. Failure by a person to provide that information to a licensing or certifying agency results in an automatic denial of a request for a license or certificate of authority or a renewal.

[ 1993, c. 312, §5 (NEW) .]

**2**. **Failure to file or pay taxes; determination to prevent renewal, reissuance or other extension of license or certificate.** If the commissioner determines that an employer who holds a state-issued license or certificate of authority to conduct a profession, trade or business has failed to file a return at the time required under this chapter or has failed to pay a tax liability due under this chapter that has been demanded, and the employer continues to fail to file or pay after at least 2 specific written requests to do so, the commissioner shall notify the employer in writing by certified mail, return receipt requested, that refusal to file the required tax return or to pay the overdue tax liability may result in loss of license or certificate of authority.

This written notice must include information about the opportunity to request a fact-finding interview for the purpose of determining essential facts, negotiating a payment agreement and determining the appropriateness of further enforcement under this section.

If the employer requests a fact-finding interview within 30 days, the commissioner shall schedule the interview at which the commissioner shall attempt to negotiate a reasonable payment agreement. The employer must be notified in writing if the commissioner's determination is to prevent renewal, reissuance or extension of the license or certificate of authority by the issuing agency. If the employer enters into a payment agreement, a determination may not be made under this section until the employer fails to comply with the agreement.

If the employer continues, for a period in excess of 30 days from notice of possible denial of renewal or reissuance of a license or certificate of authority, to fail to file or show reason why the person is not required to file or if the employer continues not to pay, the commissioner shall notify the employer in writing of the determination to prevent renewal, reissuance or extension of the license or certificate of authority by the issuing agency.

A review of the determination is available by filing an appeal under section 1226 to the Maine Unemployment Insurance Commission. Either by failure to proceed to the next step of appeal or by exhaustion of the steps of appeal, the determination of the commissioner's right to prevent renewal or reissuance becomes final unless otherwise determined by appeal.

In any event, the license or certificate of authority in question remains in effect until all appeals are taken to their final conclusion. This subsection may not be invoked for any tax liability under appeal.

[ 1993, c. 312, §5 (NEW) .]

**3**. **Refusal to renew, reissue or otherwise extend license or certificate.** Notwithstanding any other provision of law, any issuing agency that is notified by the commissioner of the commissioner's final determination to prevent renewal or reissuance of a license or certificate of authority under subsection 2 shall refuse to reissue, renew or otherwise extend the license or certificate of authority. Notwithstanding Title 5, sections 10003 and 10005, an action by an issuing agency pursuant to this subsection is not subject to the requirements of Title 5, chapter 375, subchapters IV and VI and no hearing by the issuing agency or in District Court is required. A refusal by an agency to reissue, renew or otherwise extend the license or certificate of authority is deemed a final determination within the meaning of Title 5, section 10002.

[ 1993, c. 312, §5 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

**4**. **Subsequent reissuance, renewal or other extension of license or certificate.** The agency may reissue, renew or otherwise extend the license or certificate of authority in accordance with the agency's statutes and rules after the agency receives a certificate issued by the commissioner that the person is in good standing with respect to all returns due or with respect to any tax due as of the date of issuance of the certificate. An agency may waive any applicable requirement for reissuance, renewal or other extension if it determines that the imposition of that requirement places an undue burden on the person and that a waiver of the requirement is consistent with the public interest.

[ 1993, c. 312, §5 (NEW) .]

**5**. **Financial institutions excluded.** This section does not apply to any registration, permit, order or approval issued pursuant to Title 9-B nor does it apply to tax registration certificates issued by the Bureau of Revenue Services for sales tax, withholding tax and fuel tax.

[ 1993, c. 312, §5 (NEW); 1997, c. 526, §14 (AMD) .]

SECTION HISTORY
1993, c. 312, §5 (NEW). 1997, c. 526, §14 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

## §1233. COLLECTION BY LEVY ON 3RD PARTIES

**1**. **Notice of levy.** If an employer fails to pay any part of the contribution, interest or penalties due under this chapter, the Director of Unemployment Compensation may notify by mail a 3rd party who has possession or control of property in which the delinquent employer may have an interest or who may owe a debt to the delinquent employer, other than earnings.

A. A notice under this section may be given any time after the amount due under this Title becomes delinquent. The notice must state the aggregate amount of contributions, penalties, interest or other amounts due and any additional amount that will accrue by operation of law in a period not to exceed the computation ending date of the month in which the notice is given and, in the case of a credit, bank, or savings account or deposit, is effective only up to that amount. [1999, c. 464, §12 (NEW).]

[ 1999, c. 464, §12 (NEW) .]

**2**. **Notification and freezing assets.** Upon receipt of a notice provided under this section, the person receiving the notice:

A. Shall advise the Director of Unemployment Compensation no later than 20 calendar days after the date the notice was sent of any property belonging to the delinquent employer that is possessed or controlled by the person receiving the notice and of any debt owed by the person receiving the notice to the delinquent employer, except earnings; and [1999, c. 464, §12 (NEW).]

B. May not transfer or dispose of the property or debt possessed, controlled or owed by the person receiving the notice during the period of 60 calendar days after the date the notice was sent. [1999, c. 464, §12 (NEW).]

A notice sent under this section that attempts to prohibit the transfer or disposition of any property possessed or controlled by a bank is effective if it is mailed to the principal or any branch office of the bank, including any office of the bank at which the deposit is carried or the credit or property is held.

A person who has received a notice under this section and who transfers or disposes of any property or debt in a manner that violates this section is liable to the Director of Unemployment Compensation for the amount of the indebtedness of the delinquent person with respect to whose obligation the notice was given to the extent of the value of that property or debt.

[ 1999, c. 464, §12 (NEW) .]

**3**. **Levy on property.** At any time during the period of 60 calendar days described in this section, the Director of Unemployment Compensation may levy on the property or debt by delivery of a notice of levy. Upon receipt of the levy notice, the person possessing the property or debt shall transfer the property to the director or pay to the director the amount owed to the delinquent employer.

[ 1999, c. 464, §12 (NEW) .]

**4**. **Effect of levy.** A notice is effective:

A. At the time of delivery against all property, rights to property, credits and debts involving the delinquent employer that are not, as of the date of the notice, subject to a preexisting lien, attachment, garnishment or execution issued through a judicial process; and [1999, c. 464, §12 (NEW).]

B. Against all property, rights to property, credits and debts involving the delinquent employer that come into the possession or control of the person served with the notice within the period of 60 calendar days described in this section. [1999, c. 464, §12 (NEW).]

A person acting in accordance with the terms of the notice of freeze or levy issued by the Director of Unemployment Compensation is discharged from any obligation or liability to the delinquent employer with respect to the affected property, rights to property, credits and debts of the person affected by compliance with the notice of freeze or levy.

[ 1999, c. 464, §12 (NEW) .]

**5**. **Property subject to levy.** The delinquent employer property subject to levy includes:

A. A credit, bank or savings account or deposit that is subject to execution pursuant to Title 14, section 4751; or [1999, c. 464, §12 (NEW).]

B. Any other interest or personal property that is not exempt from attachment or execution pursuant to Title 14, sections 4421 to 4426. [1999, c. 464, §12 (NEW).]

[ 1999, c. 464, §12 (NEW) .]

SECTION HISTORY
1973, c. 555, §20 (AMD). 1999, c. 464, §12 (NEW).

## §1241. SPECIAL ASSESSMENT

**1**. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Advance" means a loan made from the Federal Unemployment Trust Fund to the state's Unemployment Compensation Fund on which interest will be due and payable if the loan is not repaid by the due date set by the Federal Government. [1983, c. 738, §2 (NEW).]

B. "Anticipated interest" means the amount of interest that will be due on an advance under federal law on its interest due date if the advance is not repaid by the interest due date. [1983, c. 738, §2 (NEW).]

C. "Assessment quarter" means the calendar quarter in which an advance is received. [1983, c. 738, §2 (NEW).]

D. "Assessment rate" means a rate equal to the percentage, rounded to the next highest 1/10th of 1%, derived if the amount of interest that will be due if an advance is not repaid by the interest due date, minus any existing unobligated and unencumbered balance in the Federal Advance Interest Fund, is divided by the taxable wages reported by contributing employers for the calendar quarter in the immediately preceding calendar year that corresponds to the assessment quarter. [1983, c. 738, §2 (NEW).]

E. "Federal Advance Interest Fund" means the fund defined in section 1165. [1983, c. 738, §2 (NEW).]

F. "Interest due date" means:

(1) The date on which anticipated interest is due to the Federal Government on an advance which was not repaid by the due date set by the Federal Government; or

(2) If the Federal Government allows the State to defer repayment of an advance and anticipated interest on the advance, the date on which the deferred repayment is due to the Federal Government. [1983, c. 738, §2 (NEW).]

G. "Subsequent assessment quarter" means a calendar quarter subsequent to the assessment quarter. [1983, c. 738, §2 (NEW).]

[ 1983, c. 738, §2 (NEW) .]

**2**. **Special assessment.** If an advance has not been repaid during the assessment quarter for the advance and the balance in the Federal Advance Interest Fund is insufficient to pay the anticipated interest charges that will be due on the advance on its interest due date, and if, using standards adopted under the Maine Administrative Procedure Act, the Commissioner of Labor determines that it is probable that the advance will not be repaid by the interest due date, then the Commissioner of Labor may assess a special assessment for that assessment quarter. The amount of an employer's special assessment shall be determined by multiplying the wages for employment taxable to an employer under section 1221 for that quarter by the assessment rate. Assessments shall be paid into the Federal Advance Interest Fund for use in paying interest on the advance.

After the money is received from the special assessment for the assessment quarter, if the balance in the Federal Advance Interest Fund is still not sufficient to pay the interest charges that will be due on the advance on its interest due date, then the commissioner may assess further special assessments in subsequent

assessment quarters to raise the balance in the Federal Advance Interest Fund up to a balance sufficient to pay the interest charges. All provisions in this section that apply to the special assessment also shall apply to these further special assessments.

No special assessments may be assessed if sufficient unobligated and unencumbered funds are present in the Federal Advance Interest Fund to pay the anticipated interest on the advance on its due date.

[ 1983, c. 738, §2 (NEW) .]

**3**. **Employers liable for special assessment.** Each employer subject to this chapter, other than those liable for payments in lieu of contributions, shall be liable for special assessments.

[ 1983, c. 738, §2 (NEW) .]

**4**. **Receipts.** All receipts collected from a special assessment, including interest, fines and penalties on special assessments not paid when due, shall be paid into the Federal Advance Interest Fund.

[ 1983, c. 738, §2 (NEW) .]

**5**. **Experience rating records.** No special assessment may be credited to any employer's experience rating record.

[ 1983, c. 738, §2 (NEW) .]

**6**. **Other provisions of chapter.** All provisions of this chapter and rules promulgated under this chapter regarding payments, time limits, dates of payment, reports, interest and penalties on amounts not paid by employers when due, fines, liens and warrants which apply to the collection of contributions also shall apply to the collection of special assessments.

[ 1983, c. 738, §2 (NEW) .]

SECTION HISTORY
1983, c. 738, §2 (NEW).

## Subchapter 8: SEASONAL EMPLOYMENT

## §1251. INVESTIGATIONS; HEARINGS; REGULATIONS

**1**. **Seasonal industry.** As used in this section, the term "seasonal industry" means an industry in which, because of the seasonal nature thereof, it is customary to operate only during a regularly recurring period or periods of less than 26 weeks in a calendar year. The commission shall, after investigation and hearing, pursuant to Title 5, section 9051 et seq., determine, and may thereafter from time to time redetermine, the longest seasonal period or periods during which, by the best practice of the industry in question, operations are conducted. Until such determination by the commission, no industry may be deemed seasonal.

[ 1983, c. 750, §1 (AMD) .]

**2**. **Regulations.** The commission shall prescribe fair and reasonable regulations, pursuant to Title 5, section 8051 et seq., applicable to the payment of benefits to individuals whose qualifying wages in whole or in part were earned in seasonal industries, to the period during which benefits shall be payable to them and to charges to be made to experience rating records or general funds as a result of benefits so paid.

[ 1977, c. 694, §483 (AMD) .]

**3**. **Exceptions.**

A. Any hotel, motel, inn, variety store, trading post, sporting camp or other lodging facility, including youth camps licensed under Title 22, section 2495, restaurants and other eating establishments, which customarily conducts operations that are primarily related to the production of characteristic goods or services for a regularly recurring period or periods of less than 26 weeks in any one calendar year is deemed seasonal. [2009, c. 211, Pt. B, §25 (AMD).]

B. Any potato packing business which customarily operates during a regularly recurring period of 26 or more weeks in a calendar year shall not be deemed seasonal. [1983, c. 750, §2 (AMD).]

[ 2009, c. 211, Pt. B, §25 (AMD) .]

SECTION HISTORY
1973, c. 516, (AMD). 1975, c. 407, §2 (AMD). 1977, c. 694, §§482,483 (AMD). 1983, c. 750, §§1,2 (AMD). 1987, c. 131, (AMD). 1997, c. 293, §9 (AMD). 2009, c. 211, Pt. B, §25 (AMD).

## Subchapter 9: MAINE DEVELOPMENT CORPORATION

### §1261. PURPOSE

***(REPEALED)***

SECTION HISTORY
1975, c. 602, §1 (NEW). 1985, c. 497, §20 (RP).

### §1262. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
1975, c. 602, §1 (NEW). 1985, c. 497, §20 (RP).

### §1263. COMMISSION

***(REPEALED)***

SECTION HISTORY
1975, c. 602, §1 (NEW). 1981, c. 168, §18 (AMD). 1985, c. 295, §40 (AMD). 1985, c. 497, §20 (RP). 1987, c. 402, §A158 (RP).

### §1264. POWERS AND DUTIES

***(REPEALED)***

SECTION HISTORY
1975, c. 602, §1 (NEW). 1985, c. 497, §20 (RP).

### §1265. APPLICATIONS

***(REPEALED)***

SECTION HISTORY
1975, c. 602, §1 (NEW). 1985, c. 497, §20 (RP).

### §1266. AGREEMENTS

***(REPEALED)***

SECTION HISTORY
1975, c. 602, §1 (NEW). 1985, c. 497, §20 (RP).

## §1267. ESTABLISHMENT OF TRAINING PROGRAMS; AGREEMENT APPROVAL

***(REPEALED)***

SECTION HISTORY
1975, c. 602, §1 (NEW). 1985, c. 497, §20 (RP).

## §1268. USE OF FUNDS

***(REPEALED)***

SECTION HISTORY
1975, c. 602, §1 (NEW). 1985, c. 497, §20 (RP).

# Chapter 14: JUDICIAL EMPLOYEES LABOR RELATIONS ACT

## §1281. PURPOSE

It is declared to be the public policy of this State and it is the purpose of this chapter to promote improvement of the relationship between the Judicial Department of the State and its employees by cooperating with the Supreme Judicial Court in recognizing the right of judicial employees to join labor organizations of their own choosing and to be represented by those organizations in collective bargaining for terms and conditions of employment. [1983, c. 702, (NEW).]

SECTION HISTORY
1983, c. 702, (NEW).

## §1282. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 702, (NEW).]

**1**. **Bargaining agent.** "Bargaining agent" means any lawful organization, association or individual representative of such an organization or association which has as its primary purpose the representation of employees in their employment relations with employers, and which has been determined by the public employer, as defined in subsection 6, or by the executive director of the board to be the choice of the majority of the unit as their representative.

[ 1983, c. 702, (NEW) .]

**2**. **Board.** "Board" means the Maine Labor Relations Board, as defined in section 968.

[ 1983, c. 702, (NEW) .]

**3**. **Cost items.** "Cost items" means the provisions of a collective bargaining agreement which require an appropriation by the Legislature.

[ 1983, c. 702, (NEW) .]

**4**. **Executive director.** "Executive director" means the Executive Director of the Maine Labor Relations Board, as defined in section 968, subsection 2.

[ 1983, c. 702, (NEW) .]

**5**. **Judicial employee.** "Judicial employee" means any employee of the Judicial Department, except any person:

A. Who is appointed by the Governor; [1983, c. 702, (NEW).]

B. Who serves as the State Court Administrator; [1983, c. 702, (NEW).]

C. Whose duties necessarily imply a confidential relationship to the Judicial Department's bargaining representative with respect to matters subject to collective bargaining; [1983, c. 702, (NEW).]

D. Who is a department or division head; [1983, c. 702, (NEW).]

E. Who is appointed to serve as a law clerk to a judge or a justice; [1983, c. 702, (NEW).]

F. Who is a temporary, seasonal or on-call employee, including interns; or [1983, c. 702, (NEW).]

G. Who has been employed for less than 6 months. [1983, c. 702, (NEW).]

[ 1983, c. 702, (NEW) .]

**6**. **Public employer.** "Public employer" means the Judicial Department of the State. It is the responsibility of the Judicial Department to negotiate collective bargaining agreements and to administer those agreements. It is the responsibility of the Legislature to act upon those portions of tentative agreements negotiated by the Judicial Department which require legislative action. To coordinate the employer position in the negotiation of agreements, the Legislative Council or its designee shall maintain close liaison with the bargaining representative of the Judicial Department relative to negotiating cost items in any proposed agreement. The Supreme Judicial Court may designate a bargaining representative for the Judicial Department who may:

A. Develop and execute employee relations policies, objectives and strategies consistent with the overall objectives and constitutional and statutory duties of the Judicial Department; [1983, c. 702, (NEW).]

B. Conduct negotiations with certified and recognized bargaining agents; [1983, c. 702, (NEW).]

C. Administer and interpret collective bargaining agreements, and coordinate and direct Judicial Department activities as necessary to promote consistent policies and practices; [1983, c. 702, (NEW).]

D. Represent the Judicial Department in all bargaining unit determinations, elections, prohibited practice complaints and any other proceedings growing out of employee relations and collective bargaining activities; [1983, c. 702, (NEW).]

E. Coordinate the compilation of all data and information needed for the development and evaluation of employee relations programs and in the conduct of negotiations; [1983, c. 702, (NEW).]

F. Coordinate the Judicial Department's resources as needed to represent the department in negotiations, mediation, fact finding, arbitration, mediation-arbitration and other proceedings; and [1983, c. 702, (NEW).]

G. Provide staff advice on employee relations to the courts, judges and supervisory personnel, including providing for necessary supervisory and managerial training. [1983, c. 702, (NEW).]

All state departments and agencies shall provide such assistance, services and information as required by the Judicial Department and shall take such administrative or other action as may be necessary to implement and administer the provisions of any binding agreement between the Judicial Department and employee organizations entered into under law.

[ 1983, c. 702, (NEW) .]

SECTION HISTORY
1983, c. 702, (NEW).

## §1283. RIGHT OF JUDICIAL EMPLOYEES TO JOIN OR REFRAIN FROM JOINING LABOR ORGANIZATIONS; PROHIBITION

A person may not directly or indirectly interfere with, intimidate, restrain, coerce or discriminate against a judicial employee or a group of judicial employees in the free exercise of their rights, given by this section, to voluntarily: [2007, c. 415, §15 (RPR).]

**1**. **Join a union.** Join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining or in the free exercise of any other right under this chapter; or

[ 2007, c. 415, §15 (NEW) .]

**2**. **Not join a union.** Refrain from joining or participating in the activities of organizations for the purposes of representation and collective bargaining, except that an employee may be required to pay to the organization that is the bargaining agent for the employee a service fee that represents the employee's pro rata share of those expenditures that are germane to the organization's representational activities.

[ 2007, c. 415, §15 (NEW) .]

SECTION HISTORY
1983, c. 702, (NEW). 2007, c. 415, §15 (RPR).

## §1284. PROHIBITED ACTS OF THE PUBLIC EMPLOYER, JUDICIAL EMPLOYERS AND JUDICIAL EMPLOYEE ORGANIZATIONS

**1**. **Public employer prohibitions.** The public employer, its representatives and agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1283; [1983, c. 702, (NEW).]

B. Encouraging or discouraging membership in any employee organization by discrimination in regard to hire or tenure of employment or any term or condition of employment; [1983, c. 702, (NEW).]

C. Dominating or interfering with the formation, existence or administration of any employee organization; [1983, c. 702, (NEW).]

D. Discharging or otherwise discriminating against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter; [1983, c. 702, (NEW).]

E. Refusing to bargain collectively with the bargaining agent of its employees, as required by section 1285; [2007, c. 415, §16 (AMD).]

F. Blacklisting any employee organization or its members for the purpose of denying them employment; [2007, c. 415, §17 (AMD).]

G. Requiring an employee to join a union, employee association or bargaining agent as a full member; and [2007, c. 415, §18 (NEW).]

H. Terminating or disciplining an employee for not paying union dues or fees of any type. [2007, c. 415, §19 (NEW).]

[ 2007, c. 415, §§16-19 (AMD) .]

**2**. **Judicial employee prohibitions.** Judicial employees, judicial employee organizations, their agents, members and bargaining agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1283 or the public employer in the selection of its representative for purposes of collective bargaining or the adjustment of grievances; [1983, c. 702, (NEW).]

B. Refusing to bargain collectively with the public employer, as required by section 1285; [1983, c. 702, (NEW).]

C. Engaging in:

(1) A work stoppage;

(2) A slowdown;

(3) A strike; or

(4) The blacklisting of the public employer for the purpose of preventing it from filling employee vacancies. [1983, c. 702, (NEW).]

[ 1983, c. 702, (NEW) .]

**3**. **Violations.** Violations of this section shall be processed by the board in the manner provided in section 1289.

[ 1983, c. 702, (NEW) .]

SECTION HISTORY
1983, c. 702, (NEW). 2007, c. 415, §§16-19 (AMD).

## §1284-A. CONTINUATION OF GRIEVANCE ARBITRATION PROVISIONS

**1**. **Contract signed before October 1, 2005.** If a contract between a public employer and a bargaining agent signed prior to October 1, 2005 expires prior to the parties' agreement on a new contract, the grievance arbitration provisions of the expired contract pertaining to disciplinary action remain in effect until the parties execute a new contract.

[ 2005, c. 324, §4 (NEW) .]

**2**. **Contract signed after October 1, 2005.** If a contract between a public employer and a bargaining agent signed after October 1, 2005 expires prior to the parties' agreement on a new contract, the grievance arbitration provisions of the expired contract remain in effect until the parties execute a new contract. In any arbitration that is conducted pursuant to this subsection, an arbitrator shall apply only those provisions enforceable by virtue of the static status quo doctrine and may not add to, restrict or modify the applicable static status quo following the expiration of the contract, unless the parties have otherwise agreed in the collective bargaining agreement. All such grievances that are appealed to arbitration are subject exclusively to the grievance and arbitration process contained in the expired agreement, and the board does not have jurisdiction over such grievances. The arbitrator's determination is subject to appeal pursuant to the Uniform Arbitration Act. Disputes over which provisions in an expired contract are enforceable by virtue of the static status quo doctrine first must be resolved by the board, subject to appeal pursuant to applicable law. The grievance arbitration is stayed pending resolution of this issue by the board. The board may adopt rules as necessary to establish a procedure to implement the intent of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Nothing in this subsection expands, limits or modifies the scope of any grievance arbitration provisions, including procedural requirements.

[ 2005, c. 324, §4 (NEW) .]

SECTION HISTORY
1997, c. 773, §6 (NEW). 1997, c. 773, §7 (AFF). 2005, c. 324, §4 (RPR).

# §1285. OBLIGATION TO BARGAIN; METHODS OF RESOLVING DISPUTES

**1**. **Negotiations.** On and after the effective date of this chapter, it shall be the obligation of the public employer and the bargaining agent to bargain collectively. "Collective bargaining" means, for the purpose of this chapter, their mutual obligation:

A. To meet at reasonable times; [1983, c. 702, (NEW).]

B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes, provided that the parties have not otherwise agreed in a prior written contract; [1983, c. 702, (NEW).]

C. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation shall not exceed 2 years; and [1983, c. 702, (NEW).]

D. To participate in good faith in the mediation, fact finding, arbitration and mediation-arbitration procedures required by this section; [1983, c. 702, (NEW).]

E. To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration, except that by such obligation neither party may be compelled to agree to a proposal or be required to make a concession. All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining, except those matters which are prescribed or controlled by law. Such matters appropriate for collective bargaining, to the extent they are not prescribed or controlled by law, include, but are not limited to:

(1) Wage and salary schedules to the extent they are inconsistent with rates prevailing in commerce and industry for comparable work within the State;

(2) Work schedules relating to assigned hours and days of the week;

(3) Use of vacation or sick leave, or both;

(4) General working conditions;

(5) Overtime practices; and

(6) Rules for personnel administration, except for rules relating to applicants for employment and employees in an initial probationary status, including any extensions thereof, provided that the rules are not discriminatory by reason of an applicant's race, color, creed, sex or national origin.

Cost items shall be included in the Judicial Department's next operating budget in accordance with Title 4, section 24. If the Legislature rejects any of the cost items submitted to it, all cost items submitted shall be returned to the parties for further bargaining. Cost items related to a collective bargaining agreement reached under this chapter and submitted to the Legislature for its approval under this subsection shall not be submitted in the same legislation that contains cost items for employees exempted from the definition of "judicial employee" under section 1282, subsection 5, except that cost items for employees exempted under section 1282, subsection 5, paragraphs F and G, need not be excluded. [1989, c. 596, Pt. N, §6 (AMD).]

[ 1989, c. 596, Pt. N, §6 (AMD) .]

**2**. **Mediation.**

A. It is the declared policy of the State to provide full and adequate facilities for the settlement of disputes between the employer and employees or their representatives and other disputes subject to settlement through mediation. [1983, c. 702, (NEW).]

B. Mediation procedures, as provided by section 965, subsection 2, shall be followed whenever either party to a controversy requests such services prior to arbitration, or at any time on motion of the Maine Labor Relations Board or its executive director. [1983, c. 702, (NEW).]

C. The employer, union or employees involved in collective bargaining shall notify the Executive Director of the Maine Labor Relations Board, in writing, at least 30 days prior to the expiration of a contract, or 30 days prior to entering into negotiations for a first contract between the employer and the employees, or whenever a dispute arises between the parties threatening interruption of work, or under both conditions. [1983, c. 702, (NEW).]

D. Any information disclosed by either party to a dispute to the panel or any of its members in the performance of this subsection shall be privileged. [1983, c. 702, (NEW).]

[ 1983, c. 702, (NEW) .]

**3. Fact-finding.**

A. If the parties, either with or without the services of a mediator, are unable to effect a settlement of their controversy, they may agree either to call upon the Maine Labor Relations Board for fact-finding services with recommendations or to pursue some other mutually acceptable fact-finding procedure, including use of the Federal Mediation and Conciliation Service or the American Arbitration Association according to their respective procedures and rules. [1983, c. 702, (NEW).]

B. If so requested, the executive director shall appoint a fact-finding panel, ordinarily of 3 members, in accordance with rules and procedures prescribed by the board for making the appointment. Any person who has actively participated as the mediator in the immediate proceedings for which fact-finding has been called shall not sit on that fact-finding panel. The panel shall hear the contending parties to the controversy. It may request statistical data and reports on its own initiative in addition to the data regularly maintained by the Bureau of Labor Standards, and may administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues presented to them. The members of the fact-finding panel shall submit their findings and recommendations only to the parties and to the Executive Director of the Maine Labor Relations Board. [1983, c. 702, (NEW).]

C. The parties shall have a period of 30 days, after the submission of findings and recommendations from the fact finders, in which to make a good faith effort to resolve their controversy. If the parties have not resolved their controversy by the end of the period, either party or the executive director may, but not until the end of the period unless the parties otherwise agree, make the fact-finding and recommendations public. [1983, c. 702, (NEW).]

[ 1983, c. 702, (NEW) .]

**4. Arbitration.**

A. In addition to the 30-day period referred to in subsection 3, the parties shall have 15 more days, making a total of 45 days from the submission of findings and recommendations, in which to make a good faith effort to resolve their controversy. [1983, c. 702, (NEW).]

B. If the parties have not resolved their controversy by the end of that 45-day period, either party may petition the board to initiate compulsory final and binding arbitration of the negotiations' impasse. On receipt of the petition, the executive director of the board shall investigate to determine if an impasse has been reached. If he so determines, he shall issue an order requiring arbitration and requesting the parties to select one or more arbitrators. If the parties, within 10 days after the issuance of the order, have not selected an arbitrator or an arbitration panel, the board shall then order each party to select one arbitrator and, if these 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the board shall submit a list from which the parties may alternately strike names until a single name is left, who shall be appointed by the board as arbitrator. In reaching a decision under this paragraph, the arbitrator shall consider the following factors:

(1) The interests and welfare of the public and the financial ability of State Government to finance the cost items proposed by each party to the impasse;

(2) Comparison of the wages, hours and working conditions of the employees involved in the arbitration proceeding with the wages, hours and working conditions of other employees performing similar services in the executive and legislative branches of government and in public and private employment in other jurisdictions competing in the same labor market;

(3) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;

(4) Such other factors not confined to the foregoing, which are normally and traditionally taken into consideration in the determination of wages, hours and working conditions through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment, including the average Consumer Price Index;

(5) The need of the Judicial Department for qualified employees;

(6) Conditions of employment in similar occupations outside State Government;

(7) The need to maintain appropriate relationships between different occupations in the Judicial Department; and

(8) The need to establish fair and reasonable conditions in relation to job qualifications and responsibilities.

With respect to controversies over salaries, pensions and insurance, the arbitrator shall recommend terms of settlement and may make findings of fact. The recommendations and findings shall be advisory and shall not be binding upon the parties. The determination by the arbitrator on all other issues shall be final and binding on the parties.

Any hearing shall be informal and the rules of evidence for judicial proceedings shall not be binding. Any documentary evidence and other information deemed relevant by the arbitrator may be received in evidence. The arbitrator may administer oaths and require by subpoena attendance and testimony of witnesses and production of books and records and other evidence relating to the issues presented. The arbitrator shall have a period of 30 days from the termination of the hearing in which to submit his report to the parties and to the board, unless that time limitation is extended by the executive director.

[ 1983, c. 702, (NEW) .]

**5. Mediation-arbitration.**

A. The parties may agree in advance to a mediation-arbitration procedure. [1983, c. 702, (NEW).]

B. The parties may jointly select a mediator- arbitrator. If they are unable to agree, either party may request the Executive Director of the Maine Labor Relations Board to select a mediator-arbitrator from a panel of mediators or from the State Board of Arbitration and Conciliation. The executive director may not select a person who has served as a mediator at an earlier stage of the same proceedings. [1983, c. 702, (NEW).]

C. The mediator-arbitrator shall encourage the parties to reach a voluntary settlement of their dispute, but may, after a reasonable period of mediation as he may determine, initiate an arbitration proceeding by notifying the parties of his intention to serve as a single arbitrator. [1983, c. 702, (NEW).]

D. Any hearing shall be informal and the rules of evidence for judicial proceedings shall not be binding. Any documentary evidence and other information deemed relevant by the mediator-arbitrator may be received in evidence. The mediator-arbitrator shall have the power to administer oaths and to require by subpoena attendance and testimony of witnesses and production of books and records and other evidence relating to the issues presented. [1983, c. 702, (NEW).]

E. In reaching a decision, the mediator-arbi- trator shall consider the factors specified in section 1285, subsection 4. With respect to controversies over salaries, pensions and insurance, the mediator-arbitrator shall recommend terms of settlement and may make findings of fact. Such recommendations and findings shall be advisory and shall not be binding on the parties. The determination of the mediator-arbitrator on all other issues shall be final and binding on the parties. [1983, c. 702, (NEW).]

F. The mediator-arbitrator shall have a period of 30 days from the termination of the hearing in which to submit his report to the parties and to the board, unless the period is extended by the executive director. [1983, c. 702, (NEW).]

[ 1983, c. 702, (NEW) .]

**6**. **Reports of arbitration.** The results of all arbitration and mediation-arbitration proceedings, recommendations and awards conducted under this section shall be filed with the Maine Labor Relations Board at the offices of its executive director simultaneously with the submissions of the recommendations and award to the parties. In the event the parties settle their dispute during the arbitration or mediation-arbitration proceeding, the arbitrator, the chairman of the arbitration panel or the mediator-arbitrator shall submit a report of his activities to the Executive Director of the Maine Labor Relations Board not more than 5 days after the proceeding has terminated.

[ 1983, c. 702, (NEW) .]

**7**. **Costs.** The costs for the services of the mediator, the members of the fact-finding board, the neutral arbitrator and the mediator-arbitrator, including, if any, per diem expenses, and actual and necessary travel and subsistence expenses and the costs of hiring the premises where any mediation, fact-finding, arbitration or mediation-arbitration proceedings are conducted, must be shared equally by the parties to the proceedings. All other costs must be assumed by the party incurring them.

[ 1991, c. 622, Pt. O, §12 (AMD) .]

**8**. **Arbitration administration.** The cost of services rendered and expenses incurred by the State Board of Arbitration and Conciliation, as defined in section 931, and any applicable state cost allocation program charges must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and expenditures incurred by members of the State Board of Arbitration and Conciliation is the responsibility of the executive director. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action.

[ 1991, c. 798, §8 (AMD) .]

SECTION HISTORY
1983, c. 702, (NEW). 1989, c. 502, §A111 (AMD). 1989, c. 596, §N6 (AMD). 1991, c. 622, §§O12,13 (AMD). 1991, c. 798, §8 (AMD).

## §1286. BARGAINING UNIT; HOW DETERMINED

**1**. **Unit determination.** In the event of a dispute between the public employer and an employee or employees over the appropriateness of a unit for purposes of collective bargaining or between the public employer and an employee or employees over whether a supervisory or other position is included in the bargaining unit, the executive director or his designee shall make the determination, except that anyone excepted from the definition of judicial employee under section 1282 may not be included in a bargaining unit. The executive director or his designee conducting unit determination proceedings may administer oaths and require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them.

[ 1983, c. 702, (NEW) .]

**2**. **Criteria.** In determining whether a supervisory position should be excluded from the proposed bargaining unit, the executive director or his designee shall consider, among other criteria, if the principal functions of the position are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing a collective bargaining agreement or establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards.

[ 1983, c. 702, (NEW) .]

**3**. **Determination of unit appropriateness.** In determining the unit appropriate for purposes of collective bargaining, the executive director or his designee shall seek to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter, to insure a clear and identifiable community of interest among employees concerned and to avoid excessive fragmentation among bargaining units.

[ 1983, c. 702, (NEW) .]

**4**. **Unit clarification.** When there is a certified or currently recognized bargaining representative and when the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit, the public employer or any recognized or certified bargaining agent may file with the executive director a petition for a unit clarification, provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation.

[ 1983, c. 702, (NEW) .]

SECTION HISTORY
1983, c. 702, (NEW).

## §1287. DETERMINATION OF BARGAINING AGENT

**1**. **Voluntary recognition.** Any judicial employee organization may file a request with the public employer alleging that a majority of the judicial employees in an appropriate bargaining unit wish to be represented for the purpose of collective bargaining between the public employer and the employees' organization. The request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include a demonstration of majority support. The request for recognition shall be granted by the public employer, unless the public employer desires that an election determine whether the organization represents a majority of the members in the bargaining unit.

[ 1983, c. 702, (NEW) .]

**2**. **Elections.** The executive director of the board or his designee, upon signed request of a public employer alleging that one or more judicial employees or judicial employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of judicial employees, or upon signed petition of at least 30% of a bargaining unit of judicial employees that they desire to be represented by an organization, shall conduct a secret ballot election to determine whether the organization represents a majority of the members of the bargaining unit. Such an election may be conducted at suitable work locations or through the United States mail, provided that the procedures adopted and employed by the board shall maintain the anonymity of the voter from both the employee organizations and the management representatives involved.

[ 1983, c. 702, (NEW) .]

**3**. **Voting.**

A. The ballot shall contain the name of the organization and that of any other organization showing written proof of at least 10% representation of the judicial employees within the unit, together with a choice for any judicial employee to designate that he does not desire to be represented by any bargaining agent. When more than one organization is on the ballot and no one of the 3 or more choices receives a majority vote of the judicial employees voting, a runoff election shall be held. The runoff ballot shall contain the 2 choices which received the largest and 2nd largest number of votes. When an organization receives the majority of votes of those voting, the executive director of the board shall certify it as the bargaining agent. The bargaining agent certified as representing a bargaining unit shall be recognized by the public employer as the sole and exclusive bargaining agent for all of the employees in the bargaining unit, unless and until a decertification election by secret ballot shall be held and the bargaining agent declared by the executive director of the board as not representing a majority of the unit. [1983, c. 702, (NEW).]

B. Whenever 30% of the employees in a certified bargaining unit petition for a bargaining agent to be decertified, the procedures for conducting an election on the question shall be the same as for representation as bargaining agent as set forth in this chapter. [1983, c. 702, (NEW).]

C. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question concerning unit or representation may be raised, except during the period not more than 90 days nor less than 60 days prior to the expiration date of the agreement. Unit clarification proceedings are not subject to this time limitation and may be brought at any time consistent with section 1286, subsection 4. [1983, c. 702, (NEW).]

D. The bargaining agent certified by the executive director of the board or his designee as the exclusive bargaining agent shall be required to represent all the judicial employees within the unit without regard to membership in the organization certified as bargaining agent, provided that any judicial employee at any time may present his grievance to the public employer and have that grievance adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect and if the bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of that grievance. [1983, c. 702, (NEW).]

[ 1983, c. 702, (NEW) .]

SECTION HISTORY
1983, c. 702, (NEW).

## §1288. MAINE LABOR RELATIONS BOARD; RULE-MAKING PROCEDURE AND REVIEW OF PROCEEDINGS

**1**. **Rule-making procedure.** Proceedings conducted under this chapter shall be subject to the rules and procedures of the board promulgated under section 968, subsection 3.

[ 1983, c. 702, (NEW) .]

**2**. **Review of representation proceedings.** Any person aggrieved by any ruling or determination of the executive director under sections 1286 and 1287 may appeal, within 15 days of the announcement of the ruling or determination, except that in the instance of objections to the conduct of an election or challenged ballots the time period is 5 working days, to the Maine Labor Relations Board. Upon receipt of such an appeal, the board shall, within a reasonable time, hold a hearing, having first caused 7 days' notice in writing of the time and place of that hearing to be given to the aggrieved party, the labor organizations or bargaining agent and the public employer. The hearings and the procedures established in furtherance thereof must be in accordance with section 968. Decisions of the board made pursuant to this subsection are subject to review by the Superior Court under the Maine Rules of Civil Procedure, Rule 80C, in accordance with the standards specified in section 1292, provided the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested.

[ 1993, c. 90, §8 (AMD) .]

SECTION HISTORY
1983, c. 702, (NEW). 1991, c. 143, §8 (AMD). 1993, c. 90, §8 (AMD).

## §1289. PREVENTION OF PROHIBITED ACTS

**1**. **Prevention of prohibited acts; board powers.** The board may prevent any person, the public employer, any judicial employee, any judicial employee organization or any bargaining agent from engaging in any of the prohibited acts enumerated in section 1284. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise.

[ 1983, c. 702, (NEW) .]

**2**. **Complaints.** The public employer, any judicial employee, any judicial employee organization or any bargaining agent which believes that any person, the public employer, any judicial employee, any judicial employee organization or any bargaining agent has engaged in or is engaging in any such prohibited practice may file a complaint with the executive director of the board stating the charges in that regard. No such complaint may be filed with the executive director until the complaining party has served a copy thereof upon the party complained of. Upon receipt of the complaint, the executive director or his designee shall review the charge to determine whether the facts as alleged may constitute a prohibited act and shall forthwith cause an investigation to be conducted. The executive director shall attempt to obtain and evaluate sworn affidavits from persons having knowledge of the facts. If it is determined that the sworn facts do not, as a matter of law, constitute a violation, the charge shall be dismissed by the executive director, subject to review by the board. If it is determined from the sworn facts that the complaint is meritorious, the executive director shall recommend a proposed settlement. The parties have 30 days after the recommendations are made to resolve their dispute. If the parties have not resolved their dispute by the end of the 30-day period, either party or the executive director may make the recommendations public, but not until the expiration of the 30-day period, unless the parties otherwise agree. If a formal hearing is deemed necessary by the executive director or by the board, the executive director shall serve upon the parties to the complaint a notice of the prehearing conference and of the hearing before the board, that notice to designate the time and place of the hearing for the prehearing conference or the hearing, as appropriate, provided that a hearing shall not be held based upon any alleged prohibited practice occurring more than 6 months prior to the filing of the complaint with

the executive director. The party complained of shall have the right to file a written answer to the complaint and to appear in person or otherwise and give testimony at the place and time fixed for the hearing. In the discretion of the board, any other person or organization may be allowed to intervene in that proceeding and to present testimony. Nothing in this subsection may restrict the right of the board to require the executive director or his designee to hold a prehearing conference on any prohibited practice complaint prior to the hearing before the board and taking whatever action, including dismissal, attempting to resolve disagreements between the parties or recommending an order to the board, as he may deem appropriate, subject to review by the board.

[ 1983, c. 702, (NEW) .]

**3**. **Cease and desist order.** After hearing and argument, if, upon a preponderance of the evidence received, the board shall be of the opinion that any party named in the complaint has engaged in or is engaging in any such prohibited practice, the board shall in writing state its findings of fact and the reasons for its conclusions and shall issue and cause to be served upon the party an order requiring the party to cease and desist from that prohibited practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. No order of the board may require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if that individual was suspended or discharged for cause.

[ 1983, c. 702, (NEW) .]

**4**. **Dismissal of complaint.** After hearing and argument, if the board is not persuaded by a preponderance of the evidence received that the party named in the complaint has engaged in or is engaging in any prohibited practice, the board shall in writing state its findings of fact and the reasons for its conclusions and shall issue an order dismissing the complaint.

[ 1983, c. 702, (NEW) .]

**5**. **Action to compel compliance.** If, after the issuance of an order by the board requiring any party to cease and desist or to take any other affirmative action, that party fails to comply with the order of the board, the party in whose favor the order operates or the board may file a civil action in the Superior Court in Kennebec County to compel compliance with the order of the board. In such action to compel compliance, the Superior Court shall not review the action of the board other than to determine questions of law. If an action to review the decision of the board is pending at the time of the commencement of an action for enforcement pursuant to this subsection or is thereafter filed, the 2 actions shall be consolidated.

[ 1983, c. 702, (NEW) .]

**6**. **Interim injunctive relief.** Whenever a complaint is filed with the executive director of the board, alleging that the public employer has violated section 1284, subsection 1, paragraph F, or alleging that a judicial employee or judicial employee organization or bargaining agent has violated section 1284, subsection 2, paragraph C, the party making the complaint may simultaneously seek interim injunctive relief from the Superior Court in the county in which the prohibited practice is alleged to have occurred pending the final adjudication of the board with respect to that matter.

[ 1983, c. 702, (NEW) .]

**7**. **Court review.** Either party may seek a review by the Superior Court in Kennebec County of a decision or order of the Maine Labor Relations Board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall set the complaint down for hearing and shall cause all interested parties and the board to be notified. The hearing may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it determines just and proper; except that the board's decision or order is not stayed except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk of danger to the public health, safety or welfare or interference with the exercise of the judicial power. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the finding of the board on questions of fact is final unless shown to be clearly erroneous. Any appeal to the Law Court must be the same as an appeal from an interlocutory order under section 6.

[ 2011, c. 559, Pt. A, §29 (AMD) .]

**8**. **Privileges seeking injunctive relief.** In any judicial proceeding authorized by this subsection in which injunctive relief is sought, sections 5 and 6 shall apply, except that neither an allegation nor proof of unavoidable substantial and irreparable injury to the complainant's property may be required to obtain a temporary restraining order or injunction.

[ 1983, c. 702, (NEW) .]

**9**. **Interference with exercise of judicial power.** The Maine Labor Relations Board shall not have power to interfere with the exercise of the judicial power.

[ 1983, c. 702, (NEW) .]

SECTION HISTORY
1983, c. 702, (NEW). 1991, c. 143, §9 (AMD). 1993, c. 90, §9 (AMD).
2011, c. 559, Pt. A, §29 (AMD).

## §1290. HEARINGS BEFORE THE MAINE LABOR RELATIONS BOARD

**1**. **Hearings; rules of evidence; evidence.** Hearings conducted by the board shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other evidence deemed relevant by the board may be received.

[ 1983, c. 702, (NEW) .]

**2**. **Subpoenas; evidence; witness fees.** The chairman may administer oaths and require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to the board for determination. Witnesses subpoenaed by the board shall be allowed the same fees as are paid to witnesses in the Superior Court. These fees, together with all necessary expenses of the board, shall be paid by the Treasurer of State on warrants drawn by the State Controller.

[ 1983, c. 702, (NEW) .]

SECTION HISTORY
1983, c. 702, (NEW).

## §1291. SCOPE OF BINDING CONTRACT ARBITRATION

A collective bargaining agreement between the public employer and a bargaining agent may provide for binding arbitration as the final step of a grievance procedure, but the only grievances which may be taken to such binding arbitration shall be disputes between the parties as to the meaning or application of the

specific terms of the collective bargaining agreement. An arbitrator with the power to make binding decisions pursuant to any such provision shall have no authority to add to, subtract from or modify the collective bargaining agreement. [1983, c. 702, (NEW).]

SECTION HISTORY
1983, c. 702, (NEW).

## §1292. REVIEW OF ARBITRATION AWARDS

**1**. **Review by Superior Court.** Either party may seek a review by the Superior Court of a binding determination by an arbitration panel. For interest arbitrations, the review must be sought in accordance with the Maine Rules of Civil Procedure, Rule 80B.

[ 1993, c. 90, §10 (AMD) .]

**2**. **Questions of fact.** In the absence of fraud, the binding determination of an arbitration panel, arbitrator or mediator-arbitrator shall be final upon all questions of fact.

[ 1983, c. 702, (NEW) .]

**3**. **Action by court; appeal.** The court may, after consideration, affirm or reverse or modify any such binding determination or decision based upon any erroneous ruling. An appeal may be taken to the Law Court as in any civil action.

[ 1983, c. 702, (NEW) .]

SECTION HISTORY
1983, c. 702, (NEW). 1991, c. 143, §10 (AMD). 1993, c. 90, §10 (AMD).

## §1293. SEPARABILITY

**1**. **Separability.** If any clause, sentence, paragraph or part of this chapter, or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter and the application of such provision to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part therof, directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is declared to be the legislative intent that this chapter would have been adopted had such invalid provisions not been included.

[ 1983, c. 702, (NEW) .]

**2**. **Eligibility under federal programs.** Nothing in this chapter or any contract negotiated pursuant to this chapter may in any way be interpreted or allowed to restrict or impair the eligibility of the State or the Judicial Department in obtaining the benefits under any federal grant-in-aid or assistance programs.

[ 1983, c. 702, (NEW) .]

SECTION HISTORY
1983, c. 702, (NEW).

## §1294. AMENDMENT

This Act shall not be amended without first consulting the Supreme Judicial Court. [1983, c. 702, (NEW).]

SECTION HISTORY
1983, c. 702, (NEW).

# Chapter 15: PREFERENCE TO MAINE WORKS AND CONTRACTORS

## §1301. LOCAL RESIDENTS PREFERRED; EXCEPTION

The State, counties, cities and towns, and every charitable or educational institution which is supported in whole or in part by aid granted by the State or by any municipality shall, in the awarding of contracts for constructing, altering, repairing, furnishing or equipping its buildings or public works, give preference to workmen and to bidders for such contracts who are residents of this State, provided the bids submitted by such resident bidders are equally favorable with bids submitted by contractors from without the State. This section shall not apply to construction or repairs amounting to less than $1,000 or to emergency work or to state road work.

Any contract for public improvement that is awarded by the State or any department or agency of the State is subject to the competitive bidding process established under Title 5, chapter 155, subchapter I-A. [1995, c. 524, §2 (NEW).]

SECTION HISTORY
1995, c. 524, §2 (AMD).

## §1302. PROPOSALS AND BIDS RECORDED

Every municipality calling for such bids shall enter proposals and bids upon its books, showing the name and residence of each bidder, and the amount and terms of each bid, and to whom the work or contract was awarded. The same shall be open to the inspection of the Governor. [1975, c. 771, §287 (AMD).]

SECTION HISTORY
1975, c. 771, §287 (AMD).

## §1302-A. INSURANCE COVERAGE POSTED ON PUBLIC CONSTRUCTION PROJECTS

***(REPEALED)***

SECTION HISTORY
2009, c. 452, §1 (NEW). 2011, c. 403, §1 (RP).

## §1303. PUBLIC WORKS; MINIMUM WAGE AND BENEFITS

In the employment of laborers in the construction of public works, including state highways, by the State or by persons contracting for the construction, preference must first be given to citizens of the State who are qualified to perform the work to which the employment relates and, if they can not be obtained in sufficient numbers, then to citizens of the United States. Every contract for public works construction must contain a provision for employing citizens of this State or the United States. The hourly wage and benefit rate paid to laborers employed in the construction of public works, including state highways, may not be less than the fair minimum rate as determined in accordance with section 1308. Any contractor who knowingly and willfully violates this section is subject to a fine of not less than $250 per employee violation. Each day that any contractor employs a laborer at less than the wage and benefit minimum stipulated in this section constitutes a separate violation of this section. [1997, c. 757, §1 (AMD).]

SECTION HISTORY
1965, c. 406, §1 (AMD). 1997, c. 757, §1 (AMD).

## §1304. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2011, c. 463, §1 (RPR).]

**1**. **Board.** "Board" means the Minimum Wage Rate on Construction Projects Board as constituted in sections 1304 to 1313.

[ 1967, c. 403, (RPR) .]

**2**. **Construction.** "Construction" means any construction, reconstruction, demolition, improvement, enlargement, painting, decorating or repair of any public works let to contract. The term "construction" shall not be construed to include engineering or architectural services, temporary or emergency repairs or any contract of less than $10,000.

[ 1967, c. 403, (RPR) .]

**3**. **Construction industry.** "Construction industry" means that industry which is composed of employees and employers engaged in construction, demolition, repair or moving of buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures or works whether private or public on which construction work, as defined in subsection 2, is performed.

[ 1967, c. 403, (RPR) .]

**4**. **Employee.** "Employee" shall not include such persons as are employed or hired by the public authority on a regular or temporary basis or engaged in making temporary or emergency repairs.

[ 1967, c. 403, (RPR) .]

**5**. **Fair minimum wage and benefits.** "Fair minimum wage and benefits" means the prevailing wage and benefits as determined by the Director of the Bureau of Labor Standards according to section 1306.

[ 1997, c. 757, §2 (AMD) .]

**5-A**. **Interested party.** "Interested party" means a bidder, contractor or subcontractor for a public works contract covered by this chapter.

[ 2011, c. 463, §2 (NEW) .]

**6**. **Locality.** "Locality" means where the construction is to be performed and the adjacent areas from which labor would be recruited for work on the project, and, in appropriate circumstances, it may be deemed to include the entire State.

[ 1967, c. 403, (RPR) .]

**7**. **Public authority.** "Public authority" means the Maine Turnpike Authority or any officer, board, commission or agency of the State that is authorized by law to enter into contracts for the construction of public works and is supported in whole or in part by public funds of the State . Sections 1304 to 1313 apply to expenditures made in whole or in part from public funds.

[ 1997, c. 743, §2 (AMD) .]

**8**. **Public works.** "Public works" includes public schools and all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, demolition, waterworks, airports and all other structures upon which construction may be let to contract by the State and which contract amounts to $50,000 or more.

[ 2009, c. 453, §1 (AMD) .]

**9**. **Prevailing wage and benefits.** "Prevailing wage and benefits" means the hourly wage and benefits paid to the median number of workers employed in a trade or occupation on the 2nd and 3rd week in September.

[ 1997, c. 757, §3 (AMD) .]

SECTION HISTORY
1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1971, c. 620, §13 (AMD). 1975, c. 59, §3 (AMD). RR 1995, c. 2, §65 (COR). 1997, c. 743, §2 (AMD). 1997, c. 757, §§2,3 (AMD). 2003, c. 197, §1 (AMD). 2009, c. 453, §1 (AMD). 2011, c. 463, §§1, 2 (AMD).

## §1305. POLICY DECLARED

It is declared to be the policy of the State that a wage of no less than the prevailing hourly rate of wages and benefits for work of a similar character in this State must be paid to all workers employed in the construction of public works. [1997, c. 757, §4 (AMD).]

SECTION HISTORY
1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1997, c. 757, §4 (AMD).

## §1306. FAIR MINIMUM RATE OF WAGES AND BENEFITS; DETERMINATION

The public authority shall, before advertising for bids for a public contract, ascertain from the Director of the Bureau of Labor Standards the fair minimum rate of wages and benefits to be paid by the successful bidder to the laborers, workers or mechanics employed in the performance of the contract. A schedule of minimum wages and benefits must be attached to and made a part of the specifications for the construction and must be included in the bidding documents. The "fair minimum rate of wages and benefits," for the intent and purposes of sections 1304 to 1313, is the prevailing wage and benefits paid in the locality in like construction. The director or a delegated member of that bureau shall assemble the data as to wages paid by contractors employing 5 or more construction workers in the State during the 2nd and 3rd week of September of each year. From these data, the fair minimum wage and benefits for the following calendar year must be determined by the director. Minimum wages and benefits may not be established for any trade or occupation if fewer than 10 workers are employed in such a trade or occupation in the State in the 2nd and 3rd week of September. [1997, c. 757, §5 (AMD).]

The minimum wage and benefits must be established and filed as requested by the public authority within 30 days after such a request is received by the director. No minimum wage may be determined until January 1, 1968 and does not apply to the construction of public works then underway. When fair minimum wage and benefit rates are included and made a part of any contract, the rate must remain unchanged during the time the contract is in effect. [1997, c. 757, §5 (AMD).]

SECTION HISTORY
1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1971, c. 620, §13 (AMD). 1975, c. 59, §3 (AMD). RR 1995, c. 2, §66 (COR). 1997, c. 757, §5 (AMD).

## §1307. MINIMUM WAGE RATE ON CONSTRUCTION PROJECTS BOARD; APPOINTMENTS; DUTIES

***(REPEALED)***

SECTION HISTORY
1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1971, c. 620, §13 (AMD). 1975, c. 59, §3 (AMD). 1975, c. 771, §288 (AMD). 1981, c. 168, §26 (AMD). 1983, c. 812, §165 (AMD). 1987, c. 786, §14 (RP).

## §1307-A. MINIMUM WAGE AND BENEFITS RATE ON CONSTRUCTION PROJECTS

The Director of the Bureau of Labor Standards shall form an informal, ad hoc advisory board to advise the director with respect to issues relating to wage rates on construction projects. In forming this advisory board, the director shall select a person from labor engaged in the building trades, a person from labor engaged in the highway and heavy construction trades, a person from the highway and heavy contractors and a person from the building contractors. The board must consist equally of persons and contractors covered by collectively bargained labor agreements and those not covered by collectively bargained labor agreements. [1997, c. 757, §6 (AMD).]

SECTION HISTORY
1987, c. 786, §15 (NEW). 1997, c. 757, §6 (AMD).

## §1308. PREVAILING WAGES AND BENEFITS ESTABLISHED AT REGULAR INTERVALS; HOW DETERMINED

**1**. **Determination of wage and benefit rates.** The Bureau of Labor Standards shall investigate and determine the prevailing hourly wage and benefits rate paid in the construction industry in this State during the 2nd and 3rd week of September of each year. Prevailing wages and benefits must be determined in September 1999 and become effective upon determination. In determining the prevailing rates, the bureau may ascertain and consider the applicable wage and benefits rates established by collective bargaining agreements, if any, and those rates that are paid generally in the locality where the construction of the public works is to be performed. For purposes of this subsection, "benefits" means health and welfare contributions, pension or individual retirement account contributions and vacation and annuity contributions, per diem in lieu of wages and any other form of payment, except for wages, made to or on behalf of the employee. If a defined contribution amount is not established, the most accurate estimated value of contributions must be included.

[ 1997, c. 757, §7 (AMD) .]

**1-A**. **Surveys.** The director may require any person to provide information on the wages and benefits provided to that person's employees and such other information as is needed to determine the prevailing wage and benefits. The director may assess a forfeiture of up to $50 against any person who fails to provide the information as requested.

[ 1999, c. 181, §2 (NEW) .]

**1-B**. **Additional trades.** Any party affected by this chapter that believes that there are more than 10 workers employed in the State in a laborer, worker or mechanic trade or occupation for which no wage and benefit rates were set based on the previous survey may petition the director for inclusion of that trade or occupation in a supplemental survey. The director shall determine if the proposed trade or occupation is a definable trade or occupation, is one that has been or will be used in construction of public works covered by this chapter and is underrepresented in the survey process. If the director confirms these conditions,

notwithstanding any other provision of this chapter, the director may institute supplemental survey processes to establish wage and benefit rates for the trade or occupation. These supplemental survey processes must be conducted in coordination with the regular survey and designed to minimize the burden on any employer required to respond.

[ 2005, c. 232, §1 (NEW) .]

**2**. **Certified copies.** A copy of any determination made at the request of the public authority must be certified by the director and filed immediately with the public authority. Copies must be supplied by the bureau to all persons requesting same within 10 days after the filing.

[ 1999, c. 581, §1 (AMD) .]

**3**. **Appeal.** Any person affected by the determination of the director, whether or not that person participated in the proceedings resulting in the determination, may appeal to the commissioner from that determination by filing a written notice with the commissioner stating the specific grounds of that person's objection within 10 days from the filing of the copy of the determination with the public authority. The commissioner shall hold a hearing on the appeal, pursuant to Title 5, chapter 375, subchapter IV, within 20 days from the receipt of notice of appeal. The hearing by the commissioner must be held in Augusta. The commissioner has the authority to affirm, reverse or amend the determination of the director. The commissioner shall render a decision within 10 days after the conclusion of the hearing.

[ 1999, c. 581, §1 (AMD) .]

SECTION HISTORY
1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1971, c. 620, §13 (AMD). 1977, c. 694, §484 (AMD). 1987, c. 786, §16 (AMD). RR 1991, c. 2, §100 (COR). RR 1995, c. 2, §67 (COR). 1997, c. 757, §7 (AMD). 1999, c. 181, §2 (AMD). 1999, c. 581, §1 (AMD). 2005, c. 232, §1 (AMD).

## §1309. CONTRACT TO CONTAIN PROVISIONS RELATIVE TO RATE OF WAGES AND BENEFITS TO BE PAID

In all cases when a fair minimum wage and benefits have been established, the contract between the public authority and the successful bidder must contain a provision requiring the successful bidder and all subcontractors of the successful bidder to pay a rate or rates of wages and benefits that are not less than the fair minimum wage and benefits. [1997, c. 757, §8 (AMD).]

SECTION HISTORY
1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1997, c. 757, §8 (AMD).

## §1310. WAGE AND BENEFITS RATES TO BE KEPT POSTED

A clearly legible statement of all fair minimum wage and benefits rates to be paid the several classes of laborers, workers and mechanics employed on the construction on the public work must be kept posted in a prominent and easily accessible place at the site by each contractor and subcontractor subject to sections 1304 to 1313. [1997, c. 757, §8 (AMD).]

SECTION HISTORY
1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1997, c. 757, §8 (AMD).

## §1311. WAGE AND BENEFIT RECORD OF CONTRACTOR

The contractor and each subcontractor in charge of the construction of a public work shall keep an accurate record showing the names and occupation of all laborers, workers and mechanics employed by them and all independent contractors working under contract with them in connection with the construction on the public works. The record must also show for all laborers, workers, mechanics and independent contractors the hours worked, the title of the job, the hourly rate or other method of remuneration and the actual wages or other compensation paid to each of the laborers, workers, mechanics and independent contractors. A copy of such a record must be kept at the job site and must be open at all reasonable hours to the inspection of the Bureau of Labor Standards and the public authority that let the contract and its officers and agents. It is not necessary to preserve those records for a period longer than 3 years after the termination of the contract. A copy of each such record must also be filed monthly with the public authority that let the contract. The filed record is a public record pursuant to Title 1, chapter 13, except that the public authority letting a contract shall adopt rules to protect the privacy of personal information contained in the records filed with the public authority under this section, such as Social Security numbers and taxpayer identification numbers. The rules may not prevent the disclosure of information regarding the classification of workers or independent contractors and the remuneration they receive. Such rules are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. [2003, c. 432, §1 (AMD).]

SECTION HISTORY
1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1971, c. 620, §13 (AMD). 1975, c. 59, §3 (AMD). 1997, c. 757, §9 (AMD). 2003, c. 432, §1 (AMD).

## §1312. PENALTIES FOR VIOLATION

**1**. **Violation by contractor or subcontractor.** Except as provided in section 1308, subsection 1-A, any contractor or subcontractor who willfully and knowingly violates sections 1304 to 1313 is subject to a forfeiture of not less than $250.

[ 2011, c. 403, §2 (AMD) .]

**2**. **Employees' remedies.** Any laborer, worker or mechanic engaged in construction of public works let to contract, who is paid less than the posted fair minimum rate of wages and benefits applicable, may recover from such a contractor or subcontractor the difference between the same and the posted fair minimum rate of wages and benefits a penalty equal in amount to the difference and reasonable attorney's fees; however, the surety for the contractor or subcontractor is not liable for the penalty or attorney's fees.

[ 1997, c. 757, §10 (AMD) .]

**3**. **Unfair agreement.** A person may not request, demand or receive money or other thing of value from an employee whose rate is determined by sections 1304 to 1313 upon the statement, representation or understanding that failure to comply with such request or demand will prevent the employee from procuring or retaining employment. A person may not aid, directly or indirectly, assist or abet another to violate the prohibitions of this subsection. Any person violating the prohibitions of this subsection is subject to a forfeiture of not less than $250.

[ 1997, c. 757, §10 (AMD) .]

This section may not be construed to make unlawful any provision in a collective bargaining agreement between an employer and a labor organization that relates, in any manner, to the conditioning of employment on union membership or on the payment of regular and periodic dues, or of initiation fees, to a labor organization. [1997, c. 757, §10 (AMD).]

SECTION HISTORY

1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1997, c. 757, §10 (AMD). 1999, c. 181, §3 (AMD). 2009, c. 452, §2 (AMD). 2011, c. 403, §2 (AMD).

## §1313. EXISTING CONTRACTS

Sections 1304 to 1313 apply only to contracts for construction on public works let after January 1, 1968 and to construction on public works for which there has been determined the fair minimum wage and benefits rates as provided in sections 1304 to 1313 and that determination has not been appealed as provided by section 7. [1997, c. 757, §10 (AMD).]

SECTION HISTORY
1965, c. 406, §2 (NEW). 1967, c. 403, (RPR). 1997, c. 757, §10 (AMD).

## §1314. EXCEPTIONS

Whenever a public works construction is built in whole or in part by federal funds and is under the jurisdiction of the Davis-Bacon or other Federal Act that requires the Secretary of Labor to establish the minimum wage and benefits and those minimum wages and benefits are established by the Secretary of Labor, sections 1304 to 1313 do not apply. [1997, c. 757, §11 (AMD).]

SECTION HISTORY
1967, c. 403, (NEW). 1997, c. 757, §11 (AMD).

## §1315. COOPERATION WITH THE UNITED STATES DEPARTMENT OF LABOR

The Bureau of Labor Standards may exchange wage and benefits finding information with the United States Department of Labor when the Secretary of Labor is required to establish the minimum wage and benefits rates as defined in section 1314. [1997, c. 757, §12 (AMD).]

SECTION HISTORY
1973, c. 233, (NEW). 1975, c. 59, §3 (AMD). RR 1995, c. 2, §68 (COR). 1997, c. 757, §12 (AMD).

## §1316. PUBLIC WORKS CONTRACT REQUIREMENTS

This section applies to public works contracts entered into by the Department of Transportation, the Department of Administrative and Financial Services, Bureau of General Services and the Maine Turnpike Authority for the construction, repair or improvement of roads, highways, bridges, streets or alleys or entered into, awarded or renewed by a public authority from October 1, 2011 to October 1, 2015. [2011, c. 463, §3 (NEW).]

**1**. **Contract documents.** The Department of Transportation, the Department of Administrative and Financial Services, Bureau of General Services and the Maine Turnpike Authority, as a condition of awarding a bid under this chapter, may not:

A. Require a bidder, contractor or subcontractor to enter into or comply with or prohibit a bidder, contractor or subcontractor from entering into or complying with an agreement with a labor organization on the same or a related public works project; [2011, c. 463, §3 (NEW).]

B. Discriminate against a bidder, contractor or subcontractor that becomes, refuses to enter into or remains a signatory to or complies with an agreement with a labor organization on the same or a related public works project; [2011, c. 463, §3 (NEW).]

C. Require a bidder, contractor or subcontractor to enter into or comply with or prohibit a bidder, contractor or subcontractor from entering into or complying with an agreement that requires an employee of the bidder, contractor or subcontractor, as a condition of employment, to:

(1) Become a member of or become affiliated with a labor organization; or

(2) Over the objection of the employee, pay dues or fees to a labor organization that exceed the employee's share of the labor organization's costs relating to collective bargaining, contract administration or grievance adjustment. [2011, c. 463, §3 (NEW).]

This section does not prohibit a contractor or subcontractor from voluntarily entering into an agreement described in paragraphs A and C.

The Commissioner of Transportation, the Director of the Bureau of General Services within the Department of Administrative and Financial Services and the Executive Director of the Maine Turnpike Authority may exempt a particular project, contract, subcontract, grant or cooperative agreement from the requirements of the provisions of paragraph A, B or C, if the agency head finds that special circumstances require an exemption and it is in the best economic interest of the project.

[ 2011, c. 463, §3 (NEW) .]

**2**. **Cooperation with the federal National Labor Relations Act.** This section does not prohibit an employer or any other person covered by the federal National Labor Relations Act, 29 United States Code, Chapter 7, Subchapter II from entering into agreements or engaging in any other activity protected by law. This section may not be interpreted to interfere with the labor relations of persons covered by the federal National Labor Relations Act.

[ 2011, c. 463, §3 (NEW) .]

**3**. **Compliance.** In the event that a public authority, bidder, contractor or subcontractor performs in a manner contrary to the provisions of subsection 1, the head of the public authority or the designee of the head of the public authority shall take such action consistent with law and rule as the agency determines appropriate.

[ 2011, c. 463, §3 (NEW) .]

SECTION HISTORY
2011, c. 463, §3 (NEW).

# Chapter 16: AGRICULTURAL EMPLOYEES LABOR RELATIONS ACT

## §1321. PURPOSE

***(REPEALED)***

SECTION HISTORY
1997, c. 472, §1 (NEW). 2011, c. 565, §1 (RP).

## §1322. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
1997, c. 472, §1 (NEW). 2011, c. 565, §1 (RP).

## §1323. RIGHTS OF AGRICULTURAL EMPLOYEES; ORGANIZATION, COLLECTIVE BARGAINING

***(REPEALED)***

SECTION HISTORY
1997, c. 472, §1 (NEW). 2011, c. 565, §1 (RP).

## §1324. PROHIBITED ACTS OF AGRICULTURAL EMPLOYERS, AGRICULTURAL EMPLOYEES AND AGRICULTURAL EMPLOYEE ORGANIZATIONS

***(REPEALED)***

SECTION HISTORY
1997, c. 472, §1 (NEW). 2011, c. 565, §1 (RP).

## §1325. OBLIGATION TO BARGAIN

***(REPEALED)***

SECTION HISTORY
1997, c. 472, §1 (NEW). 2011, c. 565, §1 (RP).

## §1326. BARGAINING UNIT; HOW DETERMINED

***(REPEALED)***

SECTION HISTORY
1997, c. 472, §1 (NEW). 2011, c. 565, §1 (RP).

## §1327. DETERMINATION OF BARGAINING AGENT

***(REPEALED)***

SECTION HISTORY
1997, c. 472, §1 (NEW). 2011, c. 565, §1 (RP).

## §1328. MAINE LABOR RELATIONS BOARD; RULE-MAKING PROCEDURE AND REVIEW

***(REPEALED)***

SECTION HISTORY
1997, c. 472, §1 (NEW). 2011, c. 565, §1 (RP).

## §1329. PREVENTION OF PROHIBITED ACTS

***(REPEALED)***

SECTION HISTORY
1997, c. 472, §1 (NEW). 2011, c. 559, Pt. A, §30 (AMD). 2011, c. 565, §1 (RP). 2015, c. 329, Pt. A, §16 (RP).

## §1330. HEARINGS

***(REPEALED)***

SECTION HISTORY
1997, c. 472, §1 (NEW). 2011, c. 565, §1 (RP).

## §1331. BINDING CONTRACT ARBITRATION

***(REPEALED)***

SECTION HISTORY
1997, c. 472, §1 (NEW). 2011, c. 565, §1 (RP).

## §1332. SUITS BY AND AGAINST UNINCORPORATED EMPLOYEE ORGANIZATIONS

***(REPEALED)***

SECTION HISTORY
1997, c. 472, §1 (NEW). 2011, c. 565, §1 (RP).

## §1333. REVIEW

***(REPEALED)***

SECTION HISTORY
1997, c. 472, §1 (NEW). 2011, c. 565, §1 (RP).

## §1334. FEDERAL PRECEDENTS

***(REPEALED)***

SECTION HISTORY
1997, c. 472, §1 (NEW). 2011, c. 565, §1 (RP).

# Chapter 17: UNION LABELS AND TRADE MARKS

## §1341. COUNTERFEITING OR IMITATING

***(REPEALED)***

SECTION HISTORY
1979, c. 572, §15 (RP).

## §1342. FILING AND RECORDING; CERTIFICATES; PROOF OF ADOPTION

***(REPEALED)***

SECTION HISTORY
1967, c. 441, §8 (AMD). 1979, c. 572, §15 (RP).

## §1343. INJUNCTIONS; DESTRUCTION OF COUNTERFEITS

***(REPEALED)***

SECTION HISTORY
1979, c. 572, §15 (RP).

## §1344. PROSECUTION OF CIVIL ACTIONS

***(REPEALED)***

SECTION HISTORY
1979, c. 572, §15 (RP).

## §1345. PENALTIES; COUNTERFEITING LABEL OR TRADEMARK

***(REPEALED)***

SECTION HISTORY
1979, c. 572, §15 (RP).

## §1346. -UNAUTHORIZED USE OF TRADEMARK

SECTION HISTORY
1979, c. 572, §15 (RP).

## §1347. -UNAUTHORIZED USE OF NAME OR SEAL

SECTION HISTORY
1979, c. 572, §15 (RP).

# Chapter 18: RATES OF COMPENSATION FOR FOREST PRODUCTS HARVESTING AND HAULING SERVICES

## §1351. LEGISLATIVE FINDINGS

***(REPEALED)***

SECTION HISTORY
2003, c. 670, §3 (NEW). 2003, c. 674, §1 (AMD). 2009, c. 381, §5 (RP).

## §1352. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
2003, c. 670, §3 (NEW). 2003, c. 674, §§2,3 (AMD). 2009, c. 381, §5 (RP).

## §1353. STATE ROLE IN DETERMINING RATES OF COMPENSATION; PANEL POWERS AND DUTIES

***(REPEALED)***

SECTION HISTORY
2003, c. 670, §3 (NEW). 2009, c. 381, §5 (RP).

## §1354. PARTICIPATION OF HARVESTERS AND HAULERS IN RATE DETERMINATION PROCESS

***(REPEALED)***

SECTION HISTORY
2003, c. 670, §3 (NEW). 2009, c. 381, §5 (RP).

## §1355. NEGOTIATIONS PRECEDING RATE DETERMINATION

***(REPEALED)***

SECTION HISTORY
2003, c. 670, §3 (NEW). 2009, c. 381, §5 (RP).

## §1356. ACTIVITIES ARE NOT RESTRAINT OF TRADE

***(REPEALED)***

SECTION HISTORY
2003, c. 670, §3 (NEW). 2009, c. 381, §5 (RP).

## §1357. RATE DETERMINATION PETITION

***(REPEALED)***

SECTION HISTORY
2003, c. 670, §3 (NEW). 2009, c. 381, §5 (RP).

## §1358. RATE DETERMINATION PROCEEDINGS

***(REPEALED)***

SECTION HISTORY
2003, c. 670, §3 (NEW). 2009, c. 381, §5 (RP).

## §1359. VIOLATION

***(REPEALED)***

SECTION HISTORY
2003, c. 670, §3 (NEW). 2009, c. 381, §5 (RP).

## §1360. OTHER AGREEMENTS NOT PRECLUDED

***(REPEALED)***

SECTION HISTORY
2003, c. 670, §3 (NEW). 2009, c. 381, §5 (RP).

# Chapter 19: DEPARTMENT OF LABOR

## Subchapter 1: DEPARTMENT OF LABOR

### §1401. DEPARTMENT; COMMISSIONER

***(REPEALED)***

SECTION HISTORY
1971, c. 499, §§1,3 (NEW). 1971, c. 620, §12 (RPR). 1973, c. 537, §30 (AMD). 1975, c. 771, §289 (AMD). 1977, c. 674, §25 (AMD). 1977, c. 675, §§29,30 (AMD). 1981, c. 168, §§19,20,26 (AMD). 1983, c. 305, §8 (AMD). 1983, c. 351, §37 (AMD). 1983, c. 469, §2 (AMD). 1983, c. 489, §15 (AMD). 1983, c. 650, §§3,4 (AMD). 1983, c. 816, §A24 (AMD). 1985, c. 785, §B121 (AMD). 1987, c. 542, §§F1,F2,F5 (AMD). 1995, c. 560, §G14 (RP). 1995, c. 618, §§15-17 (AMD). 1997, c. 393, §§A27-29 (AMD).

### §1401-A. DEPARTMENT; COMMISSIONER

**1**. **Establishment.** There is created and established the Department of Labor, referred to in this chapter as the "department," to achieve the most effective utilization of the employment and training resources in the State by developing and maintaining an accountable state employment and training policy, by ensuring safe working conditions and protection against loss of income and by enhancing the opportunities of individuals to improve their economic status.

[ 1995, c. 560, Pt. G, §15 (NEW) .]

**2**. **Commissioner; entities incorporated.** The department consists of a Commissioner of Labor, referred to in this chapter as the "commissioner," appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over labor matters and to confirmation by the Legislature, to serve at the pleasure of the Governor, and the following entities as previously created or established are incorporated into the Department of Labor:

A. The Bureau of Unemployment Compensation; [1995, c. 560, Pt. G, §15 (NEW).]

B. The Bureau of Employment Services; [2013, c. 467, §4 (AMD).]

C. The Bureau of Labor Standards; [1995, c. 560, Pt. G, §15 (NEW).]

D. The Bureau of Rehabilitation Services; [1995, c. 560, Pt. G, §15 (NEW).]

E. [2013, c. 467, §4 (RP).]

F. The Center for Workforce Research and Information; and [2013, c. 467, §4 (AMD).]

G. [2013, c. 467, §4 (RP).]

H. [2013, c. 467, §4 (RP).]

I. The State Workforce Investment Board. [2013, c. 467, §4 (NEW).]

[ 2013, c. 467, §4 (AMD) .]

The Department of Labor may consist of other advisory, planning and coordinating council staff, and such other advisory, planning and coordinating committees or administrative units as the commissioner determines necessary to carry out the purposes of this chapter. [1995, c. 560, Pt. G, §15 (NEW).]

SECTION HISTORY

1995, c. 560, §G15 (NEW). 2007, c. 126, §1 (AMD). 2013, c. 467, §4 (AMD).

## §1401-B. COMMISSIONER

The Commissioner of Labor is entitled to receive a fixed weekly salary in accordance with Title 2, section 6, and must be paid from the administrative funds of the Bureau of Employment Services, the Bureau of Unemployment Compensation, the Bureau of Labor Standards, the Bureau of Rehabilitation Services and from other program administrative funds that the commissioner is authorized by statute or Executive Order to administer. The commissioner may establish an Office of the Commissioner, consisting of such personnel as determined necessary to carry out the duties and responsibilities of the commissioner, and paid from administrative funds from programs that the commissioner is authorized to administer. [1995, c. 560, Pt. G, §15 (NEW).]

**1**. **Duties.** The commissioner has the following duties.

A. The commissioner shall prepare a budget for the department. [1995, c. 560, Pt. G, §15 (NEW).]

B. The commissioner shall appoint to serve at the commissioner's pleasure:

(1) Deputy Commissioner;

(2) Director of Legislative Affairs;

(3) Director of Operations;

(4) Director of Communications;

(5) Director, Bureau of Labor Standards;

(6) Director, Bureau of Employment Services; and

(7) Director, Bureau of Rehabilitation Services. [2013, c. 467, §5 (RPR).]

The commissioner may appoint, subject to the Civil Service Law, such other personnel as may be necessary to carry out the functions of the department. The commissioner may transfer personnel within the department to ensure the efficient utilization of department personnel. The commissioner may require reports and take other actions necessary to carry out the functions of the department.

[ 2013, c. 467, §5 (AMD) .]

**2**. **Purchase.** The commissioner shall coordinate the purchase and use of all department equipment.

[ 1995, c. 560, Pt. G, §15 (NEW) .]

**3**. **Review.** The commissioner shall review the functions and operations of the department to ensure that overlapping functions and operations are brought to the attention of the Governor and the Legislature.

[ 1995, c. 560, Pt. G, §15 (NEW) .]

**4**. **Data collection.** The commissioner shall conduct a survey of manufacturing and nonmanufacturing industries throughout the State once every 2 years to determine hourly occupational wage rates by gender.

[ 1995, c. 560, Pt. G, §15 (NEW) .]

**5**. **Dispute resolution services.** The commissioner may provide, by agreement with other agencies, dispute resolution services, including, but not limited to, adjudicatory proceedings, mediation and other alternative dispute resolution techniques.

[ 1995, c. 560, Pt. G, §15 (NEW) .]

**6**. **Monitor employee leasing industry.** The commissioner shall coordinate the efforts of the State to ensure that the employee leasing industry is developing in a manner that provides the greatest benefit to Maine employers while minimizing the financial risk to those employers and to the leased employees. The commissioner shall meet at least annually with representatives of the Bureau of Insurance, the Bureau of Revenue Services, the Department of Economic and Community Development, the Workers' Compensation Board and the Bureau of Labor Standards within the Department of Labor. This group shall develop written material for employers and new businesses that are considering using an employee leasing firm. The material must provide guidance for employers on what questions to ask to minimize their own financial risk and that of their employees. The material must also include instructions on how to obtain public information on employee leasing companies, such as information required for registration purposes. The commissioner shall meet with the state officials listed in this subsection on at least an annual basis to review the status of the employee leasing industry and update the written materials as needed.

[ 1997, c. 393, Pt. A, §30 (NEW); 1997, c. 526, §14 (AMD) .]

SECTION HISTORY
1995, c. 560, §G15 (NEW). 1997, c. 393, §A30 (AMD). 1997, c. 526, §14 (AMD). 2005, c. 3, §O2 (AMD). 2007, c. 1, Pt. D, §4 (AMD). 2011, c. 655, Pt. D, §10 (AMD). 2011, c. 655, Pt. D, §11 (AFF). 2011, c. 655, Pt. SS, §2 (AMD). 2013, c. 467, §5 (AMD).

## §1402. DEBARMENT FROM STATE CONTRACTS

**1**. **Definitions.** As used in this section, unless the context indicates otherwise, the following terms have the following meaning.

A. "Repeated violation" means a violation of any legal requirement under the United States Code, Title 29, Chapter 15, where a previous violation of the same requirement was found which involved a substantially similar hazard. [1999, c. 57, Pt. B, §6 (AMD).]

B. "Serious violation" means a violation where there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations or processes which have been adopted or are in use, in that place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. [1983, c. 486, (NEW).]

C. "Willful violation" means a violation committed intentionally or knowingly with an intentional disregard of, or plain indifference to, legal requirements under the United States Code, Title 29, Chapter 15. [1999, c. 57, Pt. B, §6 (AMD).]

[ 1999, c. 57, Pt. B, §6 (AMD) .]

**2**. **Debarment.** The Department of Labor shall, after hearing, debar from participation in state contracts for 2 years any person, partnership, corporation or other public or private entity found to have committed a serious, willful violation or serious, repeated violations of a standard under the United States Occupational Safety and Health Act of 1970, United States Code, Title 29, Chapter 15, and either the time for filing an appeal of the determination of that violation has expired or the appeals process has been exhausted.

[ 1999, c. 57, Pt. B, §7 (AMD) .]

The department may make an exception to this section if the condition giving rise to the violation has been abated. [1983, c. 486, (NEW).]

SECTION HISTORY
1983, c. 486, (NEW). 1999, c. 57, §§B6,7 (AMD).

## §1403. LABOR STANDARDS FOR PERSONS REQUIRED TO WORK AS CONDITION OF RECEIVING PUBLIC ASSISTANCE AND AFFECTED EMPLOYEES

**1**. **Nondisplacement of existing employees; nonavailability for layoff replacement; noninfringement on promotional opportunities or collective bargaining agreements; labor disputes.** A participant who is required to work as a condition of receiving public assistance may not be employed in or assigned to:

A. A position that was previously filled by a regular employee when that employee is on layoff from the same or an equivalent position or when the vacancy was created by terminating an employee or otherwise reducing the workforce; [1997, c. 443, §1 (NEW).]

B. An established position that is vacant; [1997, c. 443, §1 (NEW).]

C. A worksite where there is a labor dispute, including a strike or lockout; or [1997, c. 443, §1 (NEW).]

D. A worksite in a manner that violates an existing contract or collective bargaining agreement or infringes on the promotional opportunities for any employees. [1997, c. 443, §1 (NEW).]

[ 2007, c. 539, Pt. N, §56 (AMD) .]

**2**. **Grievance procedures.** The commissioner, with assistance from the department, shall adopt rules to ensure that:

A. Persons required to work as a condition of receiving public assistance have access to a grievance procedure for the purpose of resolving complaints of alleged violations of subsection 1; and [1997, c. 443, §1 (NEW).]

B. Regular employees at a worksite where a person required to work as a condition of receiving public assistance works have access to a grievance procedure for the purpose of resolving complaints of alleged violations of subsection 1. [1997, c. 443, §1 (NEW).]

Rules adopted pursuant to this subsection are routine technical rules in accordance with Title 5, chapter 375, subchapter II-A.

[ 1997, c. 443, §1 (NEW) .]

**3**. **Penalty.** Employers who do not comply with the requirements of this section may not participate in any work program for individuals required to work as a condition of receiving public assistance.

[ 1997, c. 443, §1 (NEW) .]

SECTION HISTORY
1997, c. 443, §1 (NEW). 2007, c. 539, Pt. N, §56 (AMD).

## §1404. MIGRANT AND IMMIGRANT WORKER ASSISTANCE OUTREACH PROJECT

The department, to the extent possible within available resources, shall establish a migrant and immigrant worker assistance outreach project to assist migrant and immigrant workers in the State. The project shall coordinate with employers, employees, labor unions, nonprofit agencies and government agencies that serve migrant and immigrant workers to promote efforts that: [1997, c. 620, §1 (NEW).]

**1**. **Educate.** Educate employers and migrant and immigrant workers about state and federal laws that establish workers' employment-related rights and responsibilities;

[ 1997, c. 620, §1 (NEW) .]

**2**. **Facilitate.** Facilitate access for non-English-speaking workers to necessary translation services and programs that teach English as a 2nd language;

[ 1997, c. 620, §1 (NEW) .]

**3**. **Assist.** Assist migrant and immigrant workers in obtaining services necessary to improve their health and safety and broaden their employment opportunities; and

[ 1997, c. 620, §1 (NEW) .]

**4**. **Advocate.** Advocate for migrant and immigrant workers who seek redress of their grievances or who seek to make claims through government agencies and facilitate workers' access to legal services.

[ 1997, c. 620, §1 (NEW) .]

SECTION HISTORY
1997, c. 620, §1 (NEW).

## §1405. LIVABLE WAGES; CALCULATION

***(REPEALED)***

SECTION HISTORY
2007, c. 363, §2 (NEW). 2009, c. 11, §1 (AMD). 2011, c. 569, §2 (RP).

## §1406. CALCULATION OF LIVABLE WAGE

By July 1, 2013 and biennially thereafter, the department shall calculate the livable wage and develop a basic needs budget for households in this State based on, at a minimum, a 2-parent household with 2 earners and 2 children representative family size, but only if funding has been appropriated for these purposes. [2011, c. 569, §3 (NEW).]

By December 1, 2013 and biennially thereafter, the department shall report the livable wages calculated and the basic needs budget for households developed pursuant to this section to the Legislature if funds have been appropriated for these purposes. [2011, c. 569, §3 (NEW).]

SECTION HISTORY
2011, c. 569, §3 (NEW).

# Subchapter 2: REHABILITATION SERVICES

# Article 1: REHABILITATION ACT

## §1411. SHORT TITLE

This article may be known and cited as the "Rehabilitation Act." [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1411-A. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 560, Pt. F, §13 (NEW).]

**1**. **Community rehabilitation program.** "Community rehabilitation program" means a facility operated for the primary purpose of providing rehabilitation services to or gainful employment for people with disabilities, or evaluation and vocational services for disadvantaged individuals, that provides one or more of the following services for people with disabilities:

A. Comprehensive rehabilitation services, which must include medical, psychological, social and vocational services under one management; [1995, c. 560, Pt. F, §13 (NEW).]

B. Testing, fitting or training in the use of prosthetic or orthotic devices; [1995, c. 560, Pt. F, §13 (NEW).]

C. Prevocational conditioning or recreational therapy; [1995, c. 560, Pt. F, §13 (NEW).]

D. Physical and occupational therapy; [1995, c. 560, Pt. F, §13 (NEW).]

E. Speech and hearing therapy; [1995, c. 560, Pt. F, §13 (NEW).]

F. Psychological and social services; [1995, c. 560, Pt. F, §13 (NEW).]

G. Vocational evaluation; [1995, c. 560, Pt. F, §13 (NEW).]

H. Personal and work adjustment; [1995, c. 560, Pt. F, §13 (NEW).]

I. Vocational training in combination with other rehabilitation services; [1995, c. 560, Pt. F, §13 (NEW).]

J. Placement; [1995, c. 560, Pt. F, §13 (NEW).]

K. Transitional and supported employment; and [1995, c. 560, Pt. F, §13 (NEW).]

L. Extended employment for people with severe disabilities who can not readily enter the competitive labor market. [1995, c. 560, Pt. F, §13 (NEW).]

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**2**. **Disadvantaged individuals.** "Disadvantaged individuals" means:

A. Persons with disabilities as defined in this section; [1995, c. 560, Pt. F, §13 (NEW).]

B. Individuals disadvantaged by reason of youth or advanced age, low educational attainments, ethnic or cultural factors, prison or delinquency records or other conditions; and [1995, c. 560, Pt. F, §13 (NEW).]

C. Other members of their families when the provision of rehabilitation services to family members is necessary for the rehabilitation of individuals described in paragraph A or B. [1995, c. 560, Pt. F, §13 (NEW).]

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**3**. **Evaluation and vocational services.** "Evaluation and vocational services" includes, as appropriate in each case, such services as:

A. A preliminary diagnostic study to determine that the individual is disadvantaged or has a disability-related barrier to employment and that services are needed; [1995, c. 560, Pt. F, §13 (NEW).]

B. A diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, cultural, social and environmental factors that bear on the individual's barrier to employment and rehabilitation potential, including, to the degree needed, an evaluation of the

individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities and other pertinent data helpful in determining the nature and scope of services needed; [1995, c. 560, Pt. F, §13 (NEW).]

C. Services to appraise the individual's patterns of work behavior and ability to acquire occupational skills and to develop work attitudes, work habits, work tolerances and social and behavior patterns suitable for successful job performance, including the utilization of work, simulated or real, to assess and develop the individual's capacities to perform adequately in a work environment; [1995, c. 560, Pt. F, §13 (NEW).]

D. Any other goods or services provided to a disadvantaged individual that are determined in accordance with federal regulations to be necessary for, and are provided for the purpose of, ascertaining the nature of the barrier to employment and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services or other services available to disadvantaged individuals; [1995, c. 560, Pt. F, §13 (NEW).]

E. Outreach, referral and advocacy; and [1995, c. 560, Pt. F, §13 (NEW).]

F. The administration of these evaluation and vocational services. [1995, c. 560, Pt. F, §13 (NEW).]

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**4**. **Gainful employment.** "Gainful employment" for a person who receives services from the Division for the Blind and Visually Impaired includes employment in the competitive labor market; practice of a profession; self-employment; homemaking; farm or family work, including work for which payment is in kind rather than in cash; supported employment; and home-based employment. "Gainful employment" for a person who receives services from the Division of Vocational Rehabilitation includes employment in the competitive labor market; practice of a profession; self-employment; supported employment; and home-based employment.

[ 2015, c. 141, §5 (AMD) .]

**5**. **Person with disability.** "Person with a disability" means an individual who has a physical or mental disability that constitutes a substantial barrier to employment but is of such a nature that vocational rehabilitation services may reasonably be expected to render the individual fit to engage in gainful employment that is consistent with the individual's capacities and abilities. "Person with a disability" also means an individual who has a physical or mental disability that constitutes a substantial barrier to employment and for whom vocational rehabilitation services are necessary to determine rehabilitation potential. An "individual who is under a physical or mental disability" means an individual who has a physical or mental condition that materially limits, contributes to limiting or, if not corrected, results in limiting that individual's activities or functions.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**6**. **Rehabilitation services.** "Rehabilitation services," which may be provided directly or through public or private resources, means goods and services necessary to assist a person with a disability to engage in a gainful occupation or to determine the individual's rehabilitation potential, including but not limited to vocational rehabilitation services. Vocational rehabilitation services available to people with disabilities include:

A. Evaluation, including diagnostic and related services, incidental to the determination of eligibility for and the nature and scope of services to be provided; [1995, c. 560, Pt. F, §13 (NEW).]

B. Counseling, guidance and placement services for people with disabilities, including follow-up services to assist those individuals to maintain employment; [1995, c. 560, Pt. F, §13 (NEW).]

C. Training services for people with disabilities, which may include personal and vocational adjustment, on-the-job training and books and other training materials; [2015, c. 141, §6 (AMD).]

D. Interpreting and other specific services necessary to meet the unique needs of those persons who are deaf or who have impaired hearing. These services must include the aid of qualified personnel and interpreters who can relate to and communicate on an effective and meaningful basis with persons who are deaf or have impaired hearing; [1995, c. 560, Pt. F, §13 (NEW).]

E. Recruitment and training services for people with disabilities to provide them with suitable employment opportunities; [1995, c. 560, Pt. F, §13 (NEW).]

F. Physical restoration services, including but not limited to:

(1) Corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition that is stable or slowly progressive and constitutes a substantial barrier to employment but is of such a nature that correction or modification may reasonably be expected to eliminate or substantially reduce the barrier within a reasonable length of time;

(2) Necessary hospitalization in connection with surgery or treatment;

(3) Prosthetic and orthotic devices; and

(4) Eye glasses and visual services as prescribed by a physician skilled in the diseases of the eye or by an optometrist; [1995, c. 560, Pt. F, §13 (NEW).]

G. Maintenance as necessary during rehabilitation, as established by the rules of the department; [1995, c. 560, Pt. F, §13 (NEW).]

H. Occupational licenses, tools, equipment and initial stocks and supplies; [1995, c. 560, Pt. F, §13 (NEW).]

I. In the case of a small business operated by people with severe disabilities, the operation of which can be improved by management services and supervision provided by the department, the provision of those services and that supervision, alone or together with the acquisition by the department of vending stands or other equipment and initial stocks and supplies; [1995, c. 560, Pt. F, §13 (NEW).]

J. The construction or establishment, in accordance with federal regulations, of public or other nonprofit community rehabilitation programs and the provision of other facilities and services that may contribute substantially to the rehabilitation of a group of individuals but are not related directly to the rehabilitation plan of any one person with a disability; [1995, c. 560, Pt. F, §13 (NEW).]

K. Transportation in connection with the rendering of any other rehabilitation service; [1995, c. 560, Pt. F, §13 (NEW).]

L. Any other goods and services necessary to render a person with a disability employable; and [1995, c. 560, Pt. F, §13 (NEW).]

M. Services to the families of people with disabilities when the services will contribute substantially to the rehabilitation of the individuals. [1995, c. 560, Pt. F, §13 (NEW).]

[ 2015, c. 141, §6 (AMD) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2015, c. 141, §§5, 6 (AMD).

## §1411-B. REHABILITATION SERVICES UNIT CREATED

There is created within the department a functional unit of rehabilitation services, which is equal in administrative level and status with the other major administrative units within the department. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY

1995, c. 560, §F13 (NEW).

## §1411-C. AUTHORITY

The department is the designated state agency established as the sole state agency to provide rehabilitation services, including but not limited to vocational rehabilitation services, and to provide evaluation and vocational services for purposes of the federal Rehabilitation Act of 1973 and acts amendatory and additional to the federal Rehabilitation Act of 1973. The commissioner shall make those rules that the commissioner finds necessary and appropriate for the administration of a program of rehabilitation services and shall organize such a program within the department in a manner that is consistent with existing federal and state laws, rules and regulations. [2015, c. 141, §7 (AMD).]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2015, c. 141, §7 (AMD).

## §1411-D. POWERS AND DUTIES OF DEPARTMENT

In carrying out this article, the commissioner: [1995, c. 560, Pt. F, §13 (NEW).]

**1**. **Cooperates with other departments.** Shall cooperate with other departments, agencies and institutions, both public and private, in providing for the rehabilitation of people with disabilities and the evaluation and vocational services of disadvantaged individuals, in studying the problems involved and in establishing, developing and providing, in conformity with the purposes of this article, programs, facilities and services necessary or desirable;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**2**. **Reciprocal agreements with other states.** May enter into reciprocal agreements with other states to provide for the rehabilitation of people with disabilities and disadvantaged individuals who are residents of the states concerned;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**3**. **Community rehabilitation programs.** May establish, construct and operate community rehabilitation programs and make grants to public or other nonprofit organizations for those purposes;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**4**. **Vending stands and other businesses.** May supervise the operation of vending stands and other small businesses established pursuant to this article to be conducted by people with severe disabilities;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**5**. **Research fellowships and traineeships.** May make studies, investigations, demonstrations and reports and provide training and instruction, including the establishment and maintenance of research fellowships and traineeships, with stipends and allowances as determined necessary, in matters relating to rehabilitation;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**6**. **Joint project.** May share funding and administrative responsibility with another state agency in order to carry out a joint project to provide services to people with disabilities;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**7**. **Joint undertakings.** May enter into joint undertakings with public and private agencies to further the effectiveness of services for disadvantaged individuals;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**8**. **Eligibility and priority.** Through the Bureau of Rehabilitation Services, Division of Vocational Rehabilitation and Division for the Blind and Visually Impaired, which are the designated state units under the federal Rehabilitation Act of 1973, shall determine the eligibility of individuals for rehabilitation services or evaluation and vocational services and the priority for those services in accordance with rules established by the department; and

[ 2015, c. 141, §8 (AMD) .]

**9**. **Transitional services coordination.** Through the Bureau of Rehabilitation Services, Division of Vocational Rehabilitation and Division for the Blind and Visually Impaired, which are the designated state units under the federal Rehabilitation Act of 1973, shall participate with school administrative units in transition planning for each student receiving special education services who is 16 years of age or older, or 14 years of age if determined appropriate by the student's individualized education program team, and shall assign appropriate staff as a transition contact person and as a member of the transition planning team for each student.

[ 2015, c. 141, §9 (AMD) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2011, c. 348, §8 (AMD). 2015, c. 141, §§8, 9 (AMD).

## §1411-E. ACCEPTANCE OF FEDERAL PROVISIONS

The department shall cooperate with the Federal Government in carrying out the purposes of federal statutes pertaining to vocational rehabilitation and is authorized to adopt methods of administration found by the Federal Government to be necessary for the proper and efficient operation of agreements or other conditions as necessary to secure the full benefits of the federal statutes to the State and its residents. [1995, c. 560, Pt. F, §13 (NEW).]

The department is authorized, subject to the approval of the Governor, to: [1995, c. 560, Pt. F, §13 (NEW).]

**1**. **Apply for assistance.** Apply for federal assistance under the federal Rehabilitation Act of 1973 and acts amendatory and additional to the federal Rehabilitation Act of 1973, and to comply with conditions, not inconsistent with this article, that are required for such assistance; and

[ 2015, c. 141, §10 (AMD) .]

**2**. **Perform for Federal Government.** Perform functions and services for the Federal Government in addition to those provided for in this section.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2015, c. 141, §10 (AMD).

## §1411-F. RECEIPT AND DISBURSEMENT OF FUNDS

The Treasurer of State is the appropriate officer of the State to receive and administer federal grants for rehabilitation programs, as contemplated by the federal Rehabilitation Act of 1973 and acts amendatory and additional to the federal Rehabilitation Act of 1973, and the State Controller shall authorize expenditures as approved by the department. [2015, c. 141, §11 (AMD).]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2015, c. 141, §11 (AMD).

## §1411-G. GIFTS

The commissioner, with the approval of the Governor, may accept and use gifts made unconditionally by will or otherwise for carrying out the purposes of this article. Gifts made under conditions that in the judgment of the department are proper and consistent with this article may be accepted, with the approval of the Governor, and must be held, invested, reinvested and used in accordance with the conditions of the gift. All money received as gifts or donations must be deposited in the State Treasury and constitutes a permanent fund to be called the Special Fund for Rehabilitation of People with Disabilities and to be used by the department to defray the expenses of rehabilitation in special cases as determined by the commissioner, including the payment of necessary expenses of persons undergoing training. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1411-H. MAINTENANCE NOT ASSIGNABLE

The right of a person with a disability to maintenance under this article is not transferable or assignable at law or in equity and none of the money paid or payable or rights existing under this article are subject to execution, levy, attachment, garnishment or other legal process or to the operation of bankruptcy or insolvency law. [2015, c. 141, §12 (AMD).]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2015, c. 141, §12 (AMD).

## §1411-I. HEARINGS AND JUDICIAL REVIEW

An individual applying for or receiving rehabilitation under this article who is aggrieved by an action or inaction of the department is entitled to a fair hearing by the commissioner or the commissioner's designated representative. An individual aggrieved because of the decision made on the basis of the fair hearing may appeal to the Superior Court. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1412. MISUSE OF LISTS AND RECORDS

Except for purposes directly connected with the administration of the rehabilitation program and in accordance with its rules, it is unlawful for a person or individual to solicit, disclose, receive or make use of, authorize, knowingly permit or participate in or acquiesce in the use of a list of names of, or information concerning, individuals applying for or receiving rehabilitation when that list or information is directly or indirectly derived from the records, papers, files or communications of the State or subdivisions of the State

or acquired in the course of the performance of official duties. A person who violates a provision of this section is subject to a fine of not less than $50 nor more than $300 or by imprisonment for not more than 60 days, or both. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1412-A. EMPLOYEES NOT TO ENGAGE IN POLITICAL ACTIVITIES

An officer or employee engaged in the administration of the rehabilitation program may not use that officer's or employee's official authority to influence or permit the use of the rehabilitation program for the purpose of interfering with an election or affecting the results of an election or for a partisan political purpose. An officer or employee may not solicit or receive or be obliged to contribute or render a service, assistance, subscription, assessment or contribution for a political purpose. An officer or employee violating this provision is subject to appropriate disciplinary action. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1412-B. CONTINUING STUDY OF REHABILITATION NEEDS

The department shall make continuing study of the needs of people with disabilities and disadvantaged individuals in the State and how these needs may be met most effectively. The study and planning must include appraisal of community rehabilitation programs in the State and their effectiveness and adequacy in meeting the overall needs of people with disabilities and disadvantaged. The continuing study and recommendations must be reflected in the biennial reports of the commissioner. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1412-C. BUREAU OF REHABILITATION SERVICES; DIVISION OF VOCATIONAL REHABILITATION

The commissioner shall establish within the department the Bureau of Rehabilitation Services. Within the bureau, the Division of Vocational Rehabilitation, as the designated state unit under the federal Rehabilitation Act of 1973, shall administer that group of rehabilitation services to nonblind and nonvisually impaired individuals specifically related to the federal vocational rehabilitation programs. [2015, c. 141, §13 (AMD).]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2015, c. 141, §13 (AMD).

## §1412-D. PROVISION OF REHABILITATION SERVICES

Rehabilitation services may be provided directly or through public or private resources to people with disabilities, including those who are eligible for rehabilitation services under the terms of an agreement with another state or with the Federal Government. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1412-E. RULES

The department is authorized to establish rules required for the proper administration of a vocational rehabilitation program under the federal Rehabilitation Act of 1973 and acts amendatory and additional to the federal Rehabilitation Act of 1973. These rules must include procedures for ensuring access to records by the protection and advocacy agencies designated under Title 5, Part 24 pursuant to an investigation of alleged rights violations. [2015, c. 141, §14 (AMD).]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2015, c. 141, §14 (AMD).

## §1412-F. ADOPTION OF A GRIEVANCE PROCEDURE CONCERNING DISCRIMINATION ON THE BASIS OF DISABILITY

The commissioner shall adopt rules pursuant to Title 5, chapter 375, subchapter II to create a grievance procedure applicable to all bodies of State Government in accordance with 45 Code of Federal Regulations, Section 84.7 and with 28 Code of Federal Regulations, Section 35.107(b). To the extent that a grievance procedure adopted under this section conflicts with a grievance procedure otherwise adopted by a state agency to comply with 45 Code of Federal Regulations, Section 84.7, the procedure adopted under this section controls, except in cases of conflict with other federal regulations. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1412-G. PROGRAM OF CONSUMER-DIRECTED PERSONAL CARE ASSISTANCE SERVICES

***(REPEALED)***

SECTION HISTORY
2001, c. 559, §BB4 (NEW). 2003, c. 2, §W1 (AMD). 2003, c. 465, §5 (AMD). 2003, c. 673, §WW1 (RP).

## §1412-H. PROGRAM OF STATE-FUNDED CONSUMER-DIRECTED PERSONAL CARE ASSISTANCE SERVICES

***(REPEALED)***

SECTION HISTORY
2003, c. 673, §WW2 (NEW). 2003, c. 689, §B6 (REV). 2007, c. 240, Pt. OO, §1 (RP).

## §1412-I. STRATEGIC PLANNING REPORT

**1**. **Annual report.** In addition to its existing duties, the Statewide Independent Living Council, established pursuant to 29 United States Code, Sections 796 to 796f (1999) and administered by the Bureau of Rehabilitation Services, shall, beginning January 15, 2017, provide an annual report to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over labor and economic development matters on the State's strategic planning efforts related to the ability of persons with disabilities to live independently, including but not limited to:

A. Efforts to increase opportunities for persons with disabilities to live independently within the community; [2015, c. 452, §2 (NEW).]

B. The effectiveness and coordination of programs and services designed to support independent living efforts; [2015, c. 452, §2 (NEW).]

C. Efforts to improve vocational rehabilitation outcomes and efficiency in the development of individualized plans of employment with individuals eligible to receive rehabilitation services; [2015, c. 452, §2 (NEW).]

D. Efforts to improve transition planning for students with disabilities by adding independent living assessments and strategies to prepare for postsecondary education; [2015, c. 452, §2 (NEW).]

E. Efforts to ensure that new public buildings and public accommodations are accessible by persons with disabilities and to encourage the adoption of building codes that meet the most recent federal Americans with Disabilities Act of 1990 accessibility guidelines; [2015, c. 452, §2 (NEW).]

F. Efforts to increase awareness of all available housing that is accessible and usable by persons with disabilities; and [2015, c. 452, §2 (NEW).]

G. Any recommendations for improvement in the delivery of services to persons with disabilities. [2015, c. 452, §2 (NEW).]

[ 2015, c. 452, §2 (NEW) .]

SECTION HISTORY
2015, c. 452, §2 (NEW).

## Article 2: DIVISION FOR THE DEAF, HARD OF HEARING AND LATE DEAFENED

### §1413. DIVISION FOR THE DEAF, HARD OF HEARING AND LATE DEAFENED

There is established the Division for the Deaf, Hard of Hearing and Late Deafened within the Department of Labor, Bureau of Rehabilitation Services. [2009, c. 174, §4 (AMD).]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2009, c. 174, §4 (AMD).

### §1413-A. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 560, Pt. F, §13 (NEW).]

**1**. **Advisory council.**

[ 2009, c. 174, §5 (RP) .]

**1-A**. **Commission.** "Commission" means the Commission for the Deaf, Hard of Hearing and Late Deafened.

[ 2009, c. 652, Pt. A, §39 (AMD) .]

**2**. **Deaf.** "Deaf" means that the sense of hearing of an individual is nonfunctional for the purpose of communication and that individual must depend primarily upon visual communication.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**3**. **Hard of hearing.** "Hard of hearing" means a hearing loss in an individual that results in a functional loss, but not to the extent that the individual must depend primarily upon visual communication.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**4**. **Statewide registry.**

[ 2009, c. 174, §7 (RP) .]

**5**. **Late deafened.** "Late deafened" means that the sense of hearing of an individual is nonfunctional for the purpose of communication and that the individual must depend primarily upon visual communication. The loss of the sense of hearing for a late-deafened individual occurs after the development of speech and language.

[ 2009, c. 174, §8 (NEW) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2009, c. 174, §§5-8 (AMD). 2009, c. 652, Pt. A, §39 (AMD).

## §1413-B. POWERS AND DUTIES

To provide the following services and information to deaf, hard-of-hearing and late-deafened persons, the Division for the Deaf, Hard of Hearing and Late Deafened shall: [2009, c. 174, §9 (AMD).]

**1**. **Provide advocacy.** Provide cooperative agreements or coordinate with agencies or community resources to provide advocacy for the rights of deaf, hard-of-hearing and late-deafened persons in the areas of employment, education, legal aid, health care, social services, finance, housing and other personal assistance while avoiding duplication of effort in these areas;

[ 2009, c. 174, §10 (AMD) .]

**1-A**. **Supervise vocational rehabilitation counselors for the deaf.** Provide direct supervision and oversight of vocational rehabilitation counselors who provide counseling to deaf, hard-of-hearing and late-deafened persons and who are within the division of vocational rehabilitation within the Bureau of Rehabilitation Services;

[ 2011, c. 474, §1 (NEW) .]

**2**. **Statewide registry.**

[ 2009, c. 174, §11 (RP) .]

**3**. **Information and referral.** Provide information and referral services to deaf, hard-of-hearing and late-deafened persons and their families on questions related to their disorder;

[ 2009, c. 174, §12 (AMD) .]

**4**. **Develop objectives.** Develop a plan with goals and objectives for development, planning and implementation within a framework for greater cooperation and coordination among agencies and organizations now serving or having the potential to serve deaf, hard-of-hearing and late-deafened persons;

[ 2009, c. 174, §13 (AMD) .]

**5**. **Community service center.** Continue to study the need to establish, maintain and fund at least one community service center where deaf, hard-of-hearing and late-deafened persons and their families can receive pertinent information relating to the coordination of services that each requires;

[ 2009, c. 174, §14 (AMD) .]

**6**. **Promote accessibility.** Promote accessibility to all governmental services for residents of the State who are deaf, hard-of-hearing or late-deafened persons; and

[ 2009, c. 174, §15 (AMD) .]

**7**. **Recommendations.** Make recommendations to the Governor and the joint standing committees of the Legislature having jurisdiction over labor and health and human services matters with respect to modifications in existing services or establishment of additional services for deaf, hard-of-hearing and late-deafened persons and their families.

[ 2009, c. 174, §16 (AMD) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2009, c. 174, §§9-16 (AMD). 2011, c. 474, §1 (AMD).

## §1413-C. COMMISSION

Within the department, the Commission for the Deaf, Hard of Hearing and Late Deafened, as established under Title 5, section 12004-J, subsection 17, consists of up to 23 members appointed by the Governor and representing equally consumers, professionals and the public. Members serve 3-year terms and may serve multiple terms without limit. Members are entitled to compensation in accordance with Title 5, chapter 379. [2015, c. 141, §15 (AMD).]

The commission shall appoint, from its membership, a chair and vice-chair to serve 2-year terms. The commission shall meet at the call of the chair but not less than 4 times during a calendar year. The chair may delegate duties to members to carry out the functions of the commission. [2009, c. 174, §17 (AMD).]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2009, c. 174, §17 (AMD). 2009, c. 652, Pt. A, §40 (AMD). 2015, c. 141, §15 (AMD).

## §1413-D. COMMISSION; POWERS AND DUTIES

The commission shall advise the Director of the Bureau of Rehabilitation Services and shall prepare an annual report, which is a public document to the extent that it complies with section 1412. The report must include, but is not limited to: [2009, c. 174, §18 (AMD).]

**1**. **Review.** Review of the status of services to deaf, hard-of-hearing and late-deafened persons;

[ 2009, c. 174, §18 (AMD) .]

**2**. **Recommendations.** Recommendations for priorities for the development and coordination of services to deaf, hard-of-hearing and late-deafened persons;

[ 2009, c. 174, §18 (AMD) .]

**3**. **Evaluation.** An evaluation of the progress made as the result of recommendations made in the preceding report of the chair;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**4**. **Statement of goals.** A statement of goals for activities of the division during the subsequent fiscal year; and

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**5**. **Implementation of functions.** The steps to be taken by the division to implement the functions listed in section 1413-B.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2009, c. 174, §18 (AMD).

## §1413-E. DIRECTOR OF THE DIVISION FOR THE DEAF, HARD OF HEARING AND LATE DEAFENED

**1**. **Director.** The Director of the Division for the Deaf, Hard of Hearing and Late Deafened is responsible for administering the Division for the Deaf, Hard of Hearing and Late Deafened and its programs and policies, including generating and seeking out financial aid, grants and money and overseeing vocational rehabilitation counselors who provide counseling to deaf, hard-of-hearing and late-deafened persons and who are within the division of vocational rehabilitation within the Bureau of Rehabilitation Services.

[ 2011, c. 474, §2 (AMD) .]

**2**. **Director of the Division for the Deaf, Hard of Hearing and Late Deafened; staff; qualifications.** The Director of the Division for the Deaf, Hard of Hearing and Late Deafened and the staff must be knowledgeable of the needs of deaf, hard-of-hearing and late-deafened persons and possess the ability to communicate on a meaningful basis with those persons.

[ 2011, c. 474, §2 (AMD) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2009, c. 174, §19 (AMD). 2011, c. 474, §2 (AMD).

# Article 3: INDEPENDENT LIVING SERVICES FOR PEOPLE WITH DISABILITIES

## §1414. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 560, Pt. F, §13 (NEW).]

**1**. **Independent living services.** "Independent living services" means services that promote or train people with severe disabilities in managing their personal affairs, participating in day-to-day life in the community, fulfilling a range of social roles and making decisions that lead to self-determination and the minimization of physical or psychological dependence on others.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

SECTION HISTORY

1995, c. 560, §F13 (NEW).

## §1414-A. GRANTS

The department may make grants to establish independent living services. Funds must be disbursed and audited in accordance with departmental grant policies and procedures. The department shall submit an annual accounting of the program to the joint standing committee of the Legislature having jurisdiction over labor matters. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

# Article 4: ASSISTANCE TO PEOPLE WITH SEVERE PHYSICAL DISABILITIES TO ENABLE THEM TO WORK

## §1415. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 560, Pt. F, §13 (NEW).]

**1**. **Bureau.** "Bureau" means the Bureau of Rehabilitation Services in the Department of Labor.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**2**. **Employed.** "Employed" means engaged in activity of 20 or more hours per week for remuneration.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**3**. **Personal care assistance services.** "Personal care assistance services" means services required by an individual with a severe physical disability for that individual to become physically independent in connection with that individual's capability for or actual employment. These services include, but are not limited to:

A. Routine bodily functions, such as bowel or bladder care; [1995, c. 560, Pt. F, §13 (NEW).]

B. Dressing; [1995, c. 560, Pt. F, §13 (NEW).]

C. Preparation and consumption of food; [1995, c. 560, Pt. F, §13 (NEW).]

D. Moving in and out of bed; [1995, c. 560, Pt. F, §13 (NEW).]

E. Routine bathing; [1995, c. 560, Pt. F, §13 (NEW).]

F. Ambulation; and [1995, c. 560, Pt. F, §13 (NEW).]

G. Any other similar function of daily living. [1995, c. 560, Pt. F, §13 (NEW).]

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**4**. **Severe physical disability.** "Severe physical disability" means a functional loss of 3 extremities when it is anticipated that the loss is permanent.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1415-A. SUBSIDY

The bureau shall subsidize, in whole or in part, personal care assistance services for individuals eligible under section 1415-B. The amount of the subsidy for each hour of personal care assistance services is determined by the director of the bureau. The director of the bureau shall establish a sliding scale for financial participation by individuals who receive subsidies for personal care assistance services under this article. [1995, c. 560, Pt. F, §13 (NEW).]

The sliding scale must be based on the net income of individuals who apply for or receive subsidies for personal care assistance services. The expenses associated with each individual's disabilities must be factored into the calculation of net income for the individual. Information needed to determine net income must be furnished through the self-declaration of individuals who apply for or receive subsidies, or their representatives. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1415-B. ELIGIBILITY

An individual is eligible for a subsidy under section 1415-A if that individual: [1995, c. 560, Pt. F, §13 (NEW).]

**1**. **Severe physical disability.** Has a severe physical disability;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**2**. **Employed.** Is employed or ready for employment;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**3**. **Need for services.** Has a need documented under section 1415-C for no fewer than 14 nor more than 35 hours a week of personal care assistance services, which services are necessary to enable the individual to be employed. The limitation of 35 hours may be exceeded as provided in section 1415-C;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**4**. **Not otherwise eligible.** Is not otherwise eligible for personal care assistance services under other state or federal programs;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**5**. **Agrees to reevaluation.** Agrees to a periodic reevaluation of the individual's need for personal care assistance services and of the extent of that need; and

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**6**. **Income and support.** Has no or insufficient personal income or other support from public services, family members or neighbors.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1415-C. EVALUATION TEAM REPORT

**1**. **Team designation.** The director of the bureau shall designate one or more evaluation teams, which must consist of at least 2 persons, one of whom must be a registered nurse licensed under Title 32, chapter 31, subchapter III and one of whom must be a registered occupational therapist.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**2**. **Duties.** An individual who applies to the bureau for a personal care assistance services subsidy must be evaluated by an evaluation team, which shall determine the need of that individual for personal care assistance services and the extent of that need. If the team determines that the individual needs more than 35 hours a week of personal care assistance services, that recommendation must be part of the report to the director.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**3**. **Redetermination.** An individual receiving a personal care assistance services subsidy under section 1415-A must be periodically reevaluated by an evaluation team to determine the individual's continuing need for personal care assistance services and the extent of that need.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1415-D. RULES

The director of the bureau may adopt rules necessary to carry out the director's duties under this article. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

# Article 5: IMPROVING OUTDOOR RECREATIONAL OPPORTUNITIES FOR PERSONS WITH DISABILITIES

## §1416. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
1995, c. 560, §F13 (NEW). 1999, c. 58, §3 (RP).

## §1416-A. ADVISORY COMMITTEE ON IMPROVING OUTDOOR RECREATIONAL OPPORTUNITIES FOR PERSONS WITH DISABILITIES

***(REPEALED)***

SECTION HISTORY
1995, c. 560, §F13 (NEW). 1999, c. 58, §3 (RP).

## §1416-B. IMPROVING RECREATIONAL OPPORTUNITIES FOR PERSONS WITH DISABILITIES

In addition to its existing duties, the Statewide Independent Living Council, established pursuant to 29 United States Code, Sections 796 to 796f (1999) and administered by the Bureau of Rehabilitation Services, through a standing committee on recreational opportunities for persons with disabilities, shall perform the following duties: [1999, c. 58, §4 (NEW).]

**1**. **Advise commissioners.** Advise the Commissioner of Labor, the Commissioner of Health and Human Services, the Commissioner of Agriculture, Conservation and Forestry, the Commissioner of Transportation, the Commissioner of Marine Resources, the Commissioner of Economic and Community Development and the Commissioner of Inland Fisheries and Wildlife on ways:

A. To provide technical consultation for increasing participation and inclusion for persons with disabilities in all areas of recreation, which are a matter of public policy; and [1999, c. 58, §4 (NEW).]

B. To promote the expansion of existing and the creation of new public recreational areas that are accessible to persons with disabilities; [1999, c. 58, §4 (NEW).]

[ 1999, c. 58, §4 (NEW); 2003, c. 689, Pt. B, §7 (REV); 2011, c. 657, Pt. W, §6 (REV) .]

**2**. **Educate public.** Make the public aware of existing recreational opportunities that are accessible to persons with disabilities;

[ 1999, c. 58, §4 (NEW) .]

**3**. **Provide information.** Provide and disseminate information and education to public and private clubs, organizations and civic groups and to individuals on making recreation accessible to persons with disabilities; and

[ 1999, c. 58, §4 (NEW) .]

**4**. **Conduct evaluations and provide technical assistance.** In conjunction with the Bureau of Rehabilitation Services' staff, conduct accessibility evaluations upon request and provide technical assistance to recreation providers and users with regard to providing access for persons with disabilities.

[ 1999, c. 58, §4 (NEW) .]

SECTION HISTORY
1999, c. 58, §4 (NEW). 2003, c. 689, §B7 (REV). 2011, c. 657, Pt. W, §6 (REV).

# Article 6: REHABILITATION SERVICES

## §1417. REHABILITATION SERVICES

The department, under the direction of the Governor, may establish, conduct and maintain rehabilitation work as part of its program of aid and assistance for students with disabilities. That rehabilitation work must be in cooperation with career and technical education, as provided by Title 20-A, chapter 313. [1995, c. 560, Pt. F, §13 (NEW); 2005, c. 397, Pt. D, §3 (REV).]

Funds provided for aid and assistance carried on by the department may be used in providing rehabilitation services. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY

1995, c. 560, §F13 (NEW). 2005, c. 397, §D3 (REV).

## Article 7: SERVICES FOR BLIND AND VISUALLY IMPAIRED INDIVIDUALS

### §1418. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 560, Pt. F, §13 (NEW).]

**1**. **Blind person.** "Blind person" means a person having not more than 20/200 central visual acuity in the better eye after correction or an equally disabling loss of the visual field so that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**2**. **Director.** "Director" means the Director of the Division for the Blind and Visually Impaired.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**3**. **Division.** "Division" means the Division for the Blind and Visually Impaired in the department.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**4**. **Jurisdiction.** "Jurisdiction" means the control of the maintenance, operation and protection of public buildings and property of the State or of a county or a municipality.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**5**. **Licensing agency.** "Licensing agency" means the Division for the Blind and Visually Impaired, which is the state agency designated by the Rehabilitation Services Administration in the United States Department of Education to issue licenses to blind persons for the operation of vending facilities.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**6**. **Manager.** "Manager" means the blind person, duly licensed by the division, who personally operates the vending facility.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**7**. **Public building or property.** "Public building or property" means a building or land owned, leased or occupied by a department, agency or authority of the State or a county or a municipality of the State.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**8**. **Vending facility.** "Vending facility" means a restaurant, a cafeteria, including the cafeteria located in the State Office Building in Augusta, a snack bar, a vending machine for food and beverages and goods and services customarily offered in connection with a restaurant, a cafeteria, a snack bar or a vending machine.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1418-A. DIVISION FOR THE BLIND AND VISUALLY IMPAIRED

The Division for the Blind and Visually Impaired is established within the department under the jurisdiction of the Director of the Division for the Blind and Visually Impaired. The commissioner shall appoint the director, subject to the Civil Service Law. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1418-B. JURISDICTION OF DIRECTOR DEFINED

"Jurisdiction of the director" means having direct administrative responsibility for all programs and personnel under this article. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1418-C. PROGRAM ESTABLISHED; DIVISION FOR THE BLIND AND VISUALLY IMPAIRED

The division, as the designated state unit under the federal Rehabilitation Act of 1973, shall administer services related to blind and visually impaired individuals. The division shall provide a program of services for blind persons, including prevention of blindness, locating of blind persons, vocational guidance and training of blind persons, placement of blind persons in employment, assistance to local schools in meeting the special needs of blind students, instruction of adult blind persons in their homes and other social services to blind persons. [2015, c. 141, §16 (AMD).]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2015, c. 141, §16 (AMD).

## §1418-D. EDUCATION OF BLIND CHILDREN

**1**. **Division services.** The division shall provide the following services to blind and visually impaired persons from birth to age 21:

A. Itinerant teacher services; [1995, c. 560, Pt. F, §13 (NEW).]

B. Mobility instruction; [1995, c. 560, Pt. F, §13 (NEW).]

C. Braille instruction; [1995, c. 560, Pt. F, §13 (NEW).]

D. Low-vision services; [1995, c. 560, Pt. F, §13 (NEW).]

E. Special aids and supplies needed to participate in the educational process; and [1995, c. 560, Pt. F, §13 (NEW).]

F. Advocacy, counseling and guidance services to students and their parents. [1995, c. 560, Pt. F, §13 (NEW).]

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**2**. **Department of Education input; school administrative units.** The division shall ensure that the Department of Education has input into any contract to provide educational services and delivery of those services to blind or visually impaired children from birth to 20 years of age. Educational services for blind or

visually impaired children from birth to 20 years of age are an entitlement mandated by federal law and, as such, children will receive priority for all services provided by the division. Nothing in this section relieves school administrative units from fulfilling their responsibilities under Title 20-A, Part 4, subpart 1.

[ 2011, c. 661, §1 (AMD) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2011, c. 661, §1 (AMD).

## §1418-E. MANDATORY REPORT OF BLINDNESS

Whenever, upon examination at a clinic, hospital or other institution, or elsewhere, by a physician, optometrist, institutional superintendent or other qualified person, the visual acuity of a person is found to be with correction 20/200 or less in the better eye, or the peripheral field of the person's vision is found to have contracted to a 20-degree diameter or less, regardless of visual acuity, the person conducting the examination shall, within 30 days, report to the director the result of the examination and that blindness of the person examined has been established. The report may not be made if the person examined so requests. If blindness of the person examined has been established, the division shall inform and advise that person as to services for the blind provided by the division. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1418-F. BUSINESS ENTERPRISE PROGRAM

To provide blind persons with remunerative employment, enlarge the economic opportunities of blind persons and encourage blind persons to become self-supporting, the officer, board or other authority in charge of a public building or property shall grant to the division authority: [1995, c. 560, Pt. F, §13 (NEW).]

**1**. **Vending facility.** To install in that building or property a vending facility whenever a vending facility may be operated by a blind person; and

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**2**. **Vending machines.** To place vending machines operated by the division in a building or property if a vending facility operated by a blind person is not warranted. Income from these vending machines must be used for the purposes set forth in this section.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1418-G. PREFERENCE

The officer, board or other authority in charge of a public building or property shall: [1995, c. 560, Pt. F, §13 (NEW).]

**1**. **Policies.** Adopt policies and take actions necessary to ensure that blind persons are given preference in the establishment and the operation of vending facilities on property under its jurisdiction;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**2**. **Surveys.** Cooperate with the division in surveys of properties and buildings under its control in order to find suitable locations for the operation of vending facilities by managers and, after a determination that a facility may be operated by a manager, shall cooperate with the division in the installation of a vending facility;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**3**. **Income.** To achieve and protect the preference of blind persons in the operation of vending facilities, arrange for the assignment of the income derived from vending machines that are located in reasonable proximity to and in direct competition with a vending facility for which authority is granted pursuant to this article to the manager or managers affected. A vending machine that vends articles authorized for vending pursuant to section 1418, subsection 8 and is so located that it attracts customers who would otherwise patronize the vending facility is considered to be in reasonable proximity to and in direct competition with the vending facility;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**4**. **Licensing.** Inform the division not less than 60 days prior to the termination, issuance or renewal of a contract for the operation of a vending facility; and

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**5**. **Vending machines.** Allow the division to place vending machines in a building where a vending facility operated by a manager would not be feasible. Income from these machines accrues to the division's set-aside account for purposes stated in section 1418-F.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1418-H. POWERS AND DUTIES OF THE DIVISION

In carrying out this article the division shall: [1995, c. 560, Pt. F, §13 (NEW).]

**1**. **Rules.** Prescribe rules governing:

A. The maintenance of a roster of blind persons eligible to become managers and the issuance of licenses; [1995, c. 560, Pt. F, §13 (NEW).]

B. A fair hearing. In the case of a manager desiring to appeal a decision, the division shall appoint a hearing board consisting of 3 persons, one to be chosen by the manager, one to be chosen by the division and the 3rd person chosen by the other 2 persons. The decision of the board is final; [1995, c. 560, Pt. F, §13 (NEW).]

C. The right to, the title to and the interest in vending facility equipment and stock; and [1995, c. 560, Pt. F, §13 (NEW).]

D. The civil rights of managers; [1995, c. 560, Pt. F, §13 (NEW).]

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**2**. **Other.** Prescribe rules necessary to carry out the purposes of this article;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**3**. **Surveys.** Conduct surveys to find locations where vending facilities may be operated by blind persons and establish vending facilities as it determines appropriate;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**4**. **Management.** Provide management and supervisory services determined necessary to ensure that each vending facility is operated in the most effective and productive manner possible;

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**5**. **Plans.** Provide plans and specifications for proposed vending facilities and equipment to the appropriate officer, board or authority for approval prior to installation; and

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**6**. **Other action.** Take any other action necessary or appropriate to carry out the purposes of this article.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1418-I. CONSTRUCTION; REMODELING; PLANNING FOR VENDING FACILITY

To carry out the purposes of this article, when new construction, remodeling, leasing, acquisition or improvement of public buildings or properties is authorized, the agency directing that construction, remodeling, leasing, acquisition or improvement shall, when the size of the building or property warrants, make available suitable space and facilities for vending facilities to be operated in the building or property by blind persons. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1418-J. CONSTRUCTION OF BUILDINGS

If a suitable location is available for a vending facility that requires the construction of a portable building, the division may construct such a building and may have the use of the land on which to construct the building. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1418-K. FEES

**1**. **Fees prohibited generally.** Except as provided in subsection 2, a rental fee may not be required or received for the granting of authority to the division to operate a vending facility.

[ 1997, c. 393, Pt. A, §31 (NEW) .]

**2**. **Fees authorized; limitation.** A rental fee or other fee may be charged to the operator only if the vending facility is located on commercial municipal property, including a public airport, where the following conditions are met:

A. The vending facility generates revenue primarily from the general public at large rather than from public employees; [1997, c. 393, Pt. A, §31 (NEW).]

B. The vending facility occupies space for which there are other competing retail commercial uses and other retail users are, in fact, renting nearby public space on the property; and [1997, c. 393, Pt. A, §31 (NEW).]

C. The public owner depends on generating revenue from the space occupied by the vending facility. [1997, c. 393, Pt. A, §31 (NEW).]

Any rent or other fee charged to the operator must be less than what would otherwise be charged to a competing commercial tenant and must be pursuant to a written agreement. The terms of the agreement must adequately account for the value of investments made by the division to create or maintain the vending facility.

[ 1997, c. 393, Pt. A, §31 (NEW) .]

**3**. **Application.** This section applies to the rental of vending facilities and the renewal of any rental agreement after the effective date of this section.

[ 1997, c. 393, Pt. A, §31 (NEW) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 1997, c. 393, §A31 (RPR).

## §1418-L. CORRECTIONAL, MENTAL AND CERTAIN EDUCATIONAL INSTITUTIONS

This article does not apply to or authorize the installation of vending facilities in a building wholly used by a correctional or mental institution or by an educational institution of any type supported in whole or in part from public funds, unless that educational institution is a university, college, junior college or a community college. [1995, c. 560, Pt. F, §13 (NEW); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF).

## §1418-M. APPLICATION

If a vending facility not under the control of the division exists in a building or on property of the State, a county or a municipality, the person having jurisdiction over that building or property shall give preference to the division to continue operation of the vending facility when an existing lease or contract expires or is terminated. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

# Article 8: DEAF, HARD-OF-HEARING AND LATE-DEAFENED PERSONS

# Subarticle 1: GENERAL PROVISIONS

## §1419. GENERAL PROVISIONS

**1**. **Definitions.** As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

A. "Deaf person" means a person whose sense of hearing is nonfunctional for the purpose of ordinary communication. [1995, c. 560, Pt. F, §13 (NEW).]

B. "Hard-of-hearing person" means a person whose sense of hearing is defective, but still functional, with or without amplification. [1995, c. 560, Pt. F, §13 (NEW).]

B-1. "Person with a disability" means a person who is unable to communicate by telephone because of a vision, mobility or other physical or mental impairment. [1997, c. 751, Pt. A, §1 (NEW).]

B-2. "Specialized customer communications equipment" means communications equipment used by persons with disabilities to conduct telephone communications or equipment that provides or assists in providing emergency alert notification to deaf persons or hard-of-hearing persons. "Specialized customer communications equipment" includes but is not limited to teletypewriters, artificial larynges, signaling devices, amplified handsets, telecoil technology, large number dial overlays, direct telephone dialing, fax machines, equipment necessary to use short message services or text message services and other equipment used by persons with disabilities to provide access to telephone networks and equipment that provides or facilitates emergency alert notification to deaf persons or hard-of-hearing persons. [2011, c. 173, §1 (AMD).]

C. "Speech-impaired person" means a person whose speech is nonfunctional or defective for the purpose of ordinary communication. [1995, c. 560, Pt. F, §13 (NEW).]

D. [1997, c. 751, Pt. A, §2 (RP).]

E. "Telecommunications relay service" means a service transmitting messages and information between a person using standard telephone equipment for spoken communications and a deaf, hard-of-hearing or speech-impaired person using a telecommunications device for the deaf. [1995, c. 560, Pt. F, §13 (NEW).]

F. "Late deafened" means that the sense of hearing of an individual is nonfunctional for the purpose of communication and that the individual must depend primarily upon visual communication. The loss of the sense of hearing for a late-deafened individual occurs after the development of speech and language. [2009, c. 174, §20 (NEW).]

[ 2011, c. 173, §1 (AMD) .]

**2**. **Specialized customer communications equipment system.** The department shall consult with appropriate agencies and organizations serving deaf, hard-of-hearing or speech-impaired persons and persons with disabilities concerning the needs of the specialized customer communications equipment system. To the extent that funds are available, the department shall take steps necessary to preserve and maintain a viable specialized customer communications equipment system for use by deaf, hard-of-hearing or speech-impaired persons and persons with disabilities in this State, including, but not limited to, providing for repair services and equipment for loaning to persons whose specialized customer communications equipment is being repaired. The department may also use available funds to provide training in the use of specialized customer communications equipment.

[ 2003, c. 553, Pt. A, §2 (AMD) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 1997, c. 751, §§A1-3 (AMD). 2001, c. 377, §1 (AMD). 2003, c. 553, §§A1,2 (AMD). 2009, c. 174, §20 (AMD). 2011, c. 173, §1 (AMD).

# §1419-A. SPECIALIZED CUSTOMER COMMUNICATIONS EQUIPMENT FOR PERSONS WITH DISABILITIES

**1**. **Money for specialized customer telecommunications equipment.**

[ 2003, c. 553, Pt. A, §3 (RP) .]

**2**. **Communications Equipment Fund.** There is established the Communications Equipment Fund to be used by the Division for the Deaf, Hard of Hearing and Late Deafened within the Bureau of Rehabilitation Services. The fund is nonlapsing. The fund receives money transferred by the Public Utilities Commission from the universal service fund pursuant to Title 35-A, section 7104. The Division for the Deaf, Hard of Hearing and Late Deafened may accept gifts or grants, including, but not limited to, federal grants, for the purposes of this section. Funds transferred from the universal service fund pursuant to Title 35-A, section 7104 and all gifts and grants and authorized appropriations must be deposited in the Communications Equipment Fund and disbursed in accordance with this section. The Communications Equipment Fund may be used for purchase, lease, distribution, upgrading, installation, maintenance and repair of specialized customer communications equipment for deaf, hard-of-hearing, late-deafened or speech-impaired persons and persons with disabilities, for training in the use of such equipment and for administrative costs associated with these uses of the fund, except that funds received for the purposes of subsection 6 pursuant to Title 35-A, section 7104 may be used only in accordance with subsection 6. The Division for the Deaf, Hard of Hearing and Late Deafened may draw on the Communications Equipment Fund in accordance with the communications equipment plan required under subsection 3.

[ 2009, c. 174, §21 (AMD) .]

**3**. **Communications equipment plan.** The Division for the Deaf, Hard of Hearing and Late Deafened shall develop a plan to make specialized customer communications equipment available to deaf, hard-of-hearing, late-deafened or speech-impaired persons and persons with disabilities and to distribute money from the Communications Equipment Fund. The plan must be developed by the Division for the Deaf, Hard of Hearing and Late Deafened annually, not later than January 1st, in accordance with the rule-making procedures in Title 5, chapter 375. The plan must provide for the expenditure of money from the Communications Equipment Fund for the benefit of deaf, hard-of-hearing, late-deafened or speech-impaired persons and persons with disabilities for the purchase, lease, distribution, upgrading, installation, maintenance and repair of specialized customer communications equipment capable of serving their needs and may provide for expenditures for training in the use of such equipment. Persons who are profoundly deaf or speech-impaired or who have a disability so that they are unable to use the telephone for expressive or receptive communications, as verified by a written report from an otologist, an audiologist or a physician, are eligible for assistance from the Communications Equipment Fund. The plan must ensure that persons with disabilities have access to appropriate specialized customer communications equipment to meet their individual needs. The plan must include specific criteria that govern the priorities assigned to various persons who need this equipment. The criteria must take into account household income, degree of impairment, need for emergency communications, living arrangements and other factors determined relevant by the Division for the Deaf, Hard of Hearing and Late Deafened. In developing the criteria, the Division for the Deaf, Hard of Hearing and Late Deafened shall consult with the commission and advisory councils representing the interests of persons with disabilities.

[ 2009, c. 174, §21 (AMD) .]

**4**. **Specialized customer communications equipment needs in public school system.** The Department of Education, in consultation with the Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and advocacy groups for deaf, hard-of-hearing and late-deafened persons and for the information technology interests of consumers, shall conduct an annual survey of all public schools in the State for the purpose of assessing the need for specialized customer communications equipment in the school system and report its findings to the joint standing committee of the Legislature

having jurisdiction over labor matters. The report must include: the number of deaf, hard-of-hearing and late-deafened students and their needs for specialized customer communications equipment; the availability of specialized customer communications equipment; the number of requests for specialized customer communications equipment; and the status of training for teachers and other school personnel in the use of specialized customer communications equipment.

[ 2009, c. 174, §21 (AMD) .]

**5**. **Assessment on telecommunications carriers.**

[ 2003, c. 553, Pt. A, §3 (RP) .]

**6**. **Emergency alert telecommunications service.** A person who has been certified by the Division for the Deaf, Hard of Hearing and Late Deafened as being deaf, hard-of-hearing or late-deafened and has an income of less than 135% of the federal poverty level must receive a discount of up to $10 per month in the service charge for any wireless communications device or 2-way pager that is used to receive emergency alerts issued by any state or federal agency or a discount equal to the monthly service charge for any one-way pager that is used to receive emergency alerts issued by any state or federal agency. A person using a wireless communications device or 2-way pager must receive a $10 discount except when the service charge for the wireless communications device or 2-way pager is less than $10 per month, in which case the person must receive a discount equal to the service charge for the wireless communications device or 2-way pager. A company required to provide the discount is entitled to recover amounts discounted from the Communications Equipment Fund established in subsection 2. The Bureau of Rehabilitation Services shall adopt rules to establish the process for certifying eligibility with the Division for the Deaf, Hard of Hearing and Late Deafened and for the process to be used by wireless and paging companies in recovering discounted revenue from the Communications Equipment Fund. Administrative costs associated with implementing this subsection may be paid from funds provided to the Communications Equipment Fund for the purposes of this subsection pursuant to Title 35-A, section 7104. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2009, c. 174, §21 (AMD) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 1997, c. 751, §A4 (AMD). 1999, c. 227, §§1,2 (AMD). 2003, c. 553, §A3 (AMD). 2005, c. 279, §16 (AMD). 2005, c. 336, §§1,2 (AMD). 2007, c. 224, §§1, 2 (AMD). 2009, c. 174, §21 (AMD).

## §1419-B. EQUAL ACCESS FOR DEAF, HARD-OF-HEARING OR SPEECH-IMPAIRED CONSUMERS TO WIRELESS TELECOMMUNICATION SERVICES *(REPEALED)*

SECTION HISTORY
2001, c. 377, §2 (NEW).

## Subarticle 2: RIGHTS OF DEAF AND HARD-OF-HEARING PERSONS

## §1420. POLICY

It is the policy of this State to encourage and enable deaf and hard-of-hearing persons to participate fully in the social and economic life of this State and to engage in remunerative employment. The provisions of rights and penalties for denial of those rights, as specified in this subarticle, are not intended to abrogate any actions or penalties provided for violation of human rights, as specified in the Maine Human Rights Act, Title 5, chapter 337. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1420-A. RIGHTS

The rights, established by this subarticle, of deaf and hard-of-hearing persons are as follows. [1995, c. 560, Pt. F, §13 (NEW).]

**1**. **Streets and public places.** Deaf and hard-of-hearing persons have the same rights as able-bodied persons to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities and other public places.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**2**. **Public conveyances.** Deaf and hard-of-hearing persons are entitled to full and equal accommodations, advantages, facilities and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation or amusement, or resorts and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

[ 1995, c. 560, Pt. F, §13 (NEW) .]

**3**. **Guide dogs.**

[ 2007, c. 664, §24 (RP) .]

**4**. **Especially trained guide dog trainer; access to public facilities; responsibilities.**

[ 2007, c. 664, §25 (RP) .]

**5**. **Housing accommodations; persons with hearing-assistance animals.**

[ 2007, c. 664, §26 (RP) .]

**6**. **Housing accommodations; defined.** "Housing accommodations," as used in this section, means a real property, or portion of real property, that is used or occupied, or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings, including, but not limited to, public housing projects and all forms of publicly assisted housing, single-family and multifamily rental and sale units, lodging places, condominiums and cooperative apartments. "Housing accommodations" does not include:

A. The rental of a housing accommodation in a building that contains housing accommodations for not more than 2 families living independently of each other, if the owner or members of the owner's family reside in that housing accommodation; or [1995, c. 560, Pt. F, §13 (NEW).]

B. The rental of a room or rooms in a housing accommodation, if the rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner or members of the owner's family reside in that housing accommodation. [1995, c. 560, Pt. F, §13 (NEW).]

[ 1995, c. 560, Pt. F, §13 (NEW) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2003, c. 414, §B39 (AMD). 2003, c. 414, §D7 (AFF). 2003, c. 614, §9 (AFF). 2007, c. 664, §§24-26 (AMD).

## §1420-B. MOTOR VEHICLE DRIVERS

The driver of a vehicle approaching a deaf or hard-of-hearing person using a properly identified guide dog shall take all necessary precautions to avoid injury to that person and the guide dog. A driver who fails to take such precautions is liable in damages for any injury caused to that person or dog. A deaf or hard-of-hearing person not using a guide dog in any of the places, accommodations or conveyances listed in section 1420-A has all of the rights and privileges conferred by law upon other persons. The failure of a deaf or hard-of-hearing person to use a guide dog in those places, accommodations or conveyances does not constitute nor is it evidence of contributory negligence. [1995, c. 560, Pt. F, §13 (NEW).]

SECTION HISTORY
1995, c. 560, §F13 (NEW).

## §1420-C. PENALTY

**1**. **Interference with admittance or enjoyment; rights.** A person or the person's agent may not:

A. Deny or interfere with admittance to or enjoyment of the public facilities described in section 1420-A; or [2003, c. 452, Pt. O, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Otherwise interfere with the rights of a deaf or hard-of-hearing person under section 1420-A. [2003, c. 452, Pt. O, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2003, c. 452, Pt. O, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**2**. **Penalty.** Violation of this section is a Class E crime. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[ 2003, c. 452, Pt. O, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1995, c. 560, §F13 (NEW). 2003, c. 452, §X2 (AFF). 2003, c. 452, §O6 (RPR).

## §1420-D. MISREPRESENTATION OF HEARING DOG

***(REPEALED)***

SECTION HISTORY
2003, c. 452, §O7 (NEW). 2003, c. 452, §X2 (AFF). 2007, c. 664, §27 (RP).

# Article 9: PERSONAL CARE ASSISTANCE SERVICES FOR ADULTS WITH SEVERE PHYSICAL DISABILITIES

## §1421. PROGRAM ESTABLISHED

***(REPEALED)***

SECTION HISTORY
1995, c. 560, §F13 (NEW). 1997, c. 734, §4 (RP).

## §1421-A. ELIGIBILITY

***(REPEALED)***

SECTION HISTORY
1995, c. 560, §F13 (NEW). 1997, c. 734, §4 (RP).

## §1421-B. EVALUATION TEAMS

***(REPEALED)***

SECTION HISTORY
1995, c. 560, §F13 (NEW). 1997, c. 734, §4 (RP).

## §1421-C. REIMBURSEMENT

***(REPEALED)***

SECTION HISTORY
1997, c. 509, §1 (NEW). 1997, c. 734, §4 (RP).

# Chapter 20: COMPREHENSIVE CAREER AND OCCUPATIONAL INFORMATION SYSTEM

## §1451. PURPOSE

A Comprehensive Career, Occupational and Economic Data-based System is established to provide comprehensive career and occupational information required for the coordination and efficient delivery of all employment and training programs in the State. [1987, c. 534, Pt. B, §§ 15, 23 (AMD).]

The Comprehensive Career, Occupational and Economic Data-based System shall consist of 2 components: A planning component for employment and training program planners and administrators; and a career information delivery system component for persons involved in the career decision-making process. [1987, c. 534, Pt. B, §§ 15, 23 (AMD).]

SECTION HISTORY
1981, c. 705, §O1 (NEW). 1983, c. 469, §3 (AMD). 1987, c. 534, §§B15,B23 (AMD).

## §1452. COORDINATION OF MAINE OCCUPATIONAL INFORMATION

***(REPEALED)***

SECTION HISTORY
1981, c. 705, §O1 (NEW). 1983, c. 469, §3 (AMD). 1985, c. 147, §1 (AMD). 1985, c. 295, §41 (AMD). 1985, c. 695, §17 (RPR). 1985, c. 737, §A73 (RPR). 1987, c. 402, §A159 (RPR). 1987, c. 534, §§B16,B23 (RPR). 1987, c. 769, §A107 (RPR). 1989, c. 443, §78 (AMD). 1989, c. 700, §A106 (AMD). 1995, c. 560, §G16 (AMD). 1995, c. 560, §G29 (AFF). 1997, c. 410, §10 (RPR). 1997, c. 683, §D4 (RP).

## §1453. DUTIES AND RESPONSIBILITIES

***(REPEALED)***

SECTION HISTORY
1981, c. 705, §O1 (NEW). 1983, c. 469, §3 (AMD). 1985, c. 147, §2 (AMD). 1987, c. 534, §§B17,18,B23 (AMD). 1997, c. 683, §D5 (RP).

## §1454. OPERATIONAL AUTHORITY

***(REPEALED)***

SECTION HISTORY
1981, c. 705, §O1 (NEW). 1985, c. 785, §B122 (AMD). 1995, c. 560, §G17 (AMD). 1995, c. 560, §G29 (AFF). 1997, c. 683, §D6 (RP).

# Chapter 21: DISPLACED HOMEMAKERS ACT

## §1601. DISPLACED HOMEMAKER

***(REPEALED)***

SECTION HISTORY
1977, c. 547, §2 (NEW). 2013, c. 368, Pt. AAAA, §3 (RP).

## §1602. DISPLACED HOMEMAKER PROGRAM

***(REPEALED)***

SECTION HISTORY
1977, c. 547, §2 (NEW). 1979, c. 515, §19 (RPR). 1981, c. 168, §21 (AMD). 1981, c. 515, §1 (AMD). 1981, c. 698, §119 (RPR). 2013, c. 368, Pt. AAAA, §3 (RP).

## §1603. COMMISSIONER

***(REPEALED)***

SECTION HISTORY
1977, c. 547, §2 (NEW). 1979, c. 515, §19 (RPR). 1981, c. 168, §22 (AMD). 1981, c. 515, §2 (AMD). 1981, c. 698, §120 (AMD). 2013, c. 368, Pt. AAAA, §3 (RP).

## §1604. DISPLACED HOMEMAKERS ADVISORY COUNCIL

***(REPEALED)***

SECTION HISTORY
1977, c. 547, §2 (NEW). 1979, c. 515, §19 (RPR). 1981, c. 168, §23 (AMD). 1983, c. 812, §166 (AMD). 1989, c. 503, §B112 (AMD). 1995, c. 153, §1 (AMD). 2013, c. 368, Pt. AAAA, §3 (RP).

## §1604-A. ANNUAL REPORT

***(REPEALED)***

SECTION HISTORY
1981, c. 515, §3 (NEW). 2013, c. 368, Pt. AAAA, §3 (RP).

## §1606. SERVICES OF THE MULTIPURPOSE SERVICE PROGRAM

***(REPEALED)***

SECTION HISTORY
1977, c. 547, §2 (NEW). 1979, c. 515, §20 (RP).

## §1607. EVALUATION OF THE MULTIPURPOSE SERVICE PROGRAM

***(REPEALED)***

SECTION HISTORY
1977, c. 547, §2 (NEW). 1979, c. 515, §20 (RP).

## §1608. DURATION OF MULTIPURPOSE SERVICE PROGRAM

***(REPEALED)***

SECTION HISTORY
1977, c. 547, §2 (NEW). 1979, c. 515, §20 (RP).

# Chapter 22: CHEMICAL SUBSTANCE IDENTIFICATION

## §1701. SCOPE AND APPLICATION

***(REPEALED)***

SECTION HISTORY
1979, c. 500, (NEW). 1983, c. 823, §1 (RP).

## §1702. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
1979, c. 500, (NEW). 1983, c. 568, §§3-7 (AMD). 1983, c. 823, §1 (RP).

## §1703. LABELS

***(REPEALED)***

SECTION HISTORY
1979, c. 500, (NEW). 1983, c. 823, §1 (RP).

## §1703-A. MATERIAL SAFETY DATA SHEETS

***(REPEALED)***

SECTION HISTORY
1983, c. 568, §8 (NEW). 1983, c. 823, §1 (RP).

## §1704. EMPLOYEE EDUCATION AND TRAINING

***(REPEALED)***

SECTION HISTORY
1979, c. 500, (NEW). 1983, c. 568, §§9-13 (AMD). 1983, c. 823, §1 (RP).

## §1705. ACCESS TO WRITTEN RECORDS

***(REPEALED)***

SECTION HISTORY
1979, c. 500, (NEW). 1983, c. 568, §14 (AMD). 1983, c. 823, §1 (RP).

## §1706. EFFECTIVE DATE.

***(REPEALED)***

SECTION HISTORY
1979, c. 500, (NEW). 1983, c. 823, §1 (RP).

## §1706-A. ADMINISTRATION AND ENFORCEMENT

***(REPEALED)***

SECTION HISTORY
1983, c. 568, §15 (NEW). 1983, c. 823, §1 (RP).

## §1707. PENALTY

***(REPEALED)***

SECTION HISTORY
1981, c. 261, (NEW). 1983, c. 568, §16 (AMD). 1983, c. 823, §1 (RP).

## §1708. PROHIBITED PRACTICES; REMEDY

***(REPEALED)***

SECTION HISTORY
1983, c. 568, §17 (NEW). 1983, c. 823, §1 (RP).

## §1709. PURPOSE

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1999, c. 57, §A1 (RP).

## §1710. SCOPE AND APPLICATION

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1999, c. 57, §A1 (RP).

## §1711. DEFINITIONS

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1999, c. 57, §A1 (RP).

## §1712. WRITTEN HAZARD COMMUNICATIONS PROGRAM; RECORDS

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1999, c. 57, §A1 (RP).

## §1713. LABELS

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1999, c. 57, §A1 (RP).

## §1714. MATERIAL SAFETY DATA SHEETS

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1999, c. 57, §A1 (RP).

## §1715. EMPLOYEE INFORMATION AND TRAINING

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1987, c. 763, §3 (AMD). 1999, c. 57, §A1 (RP).

## §1716. ACCESS TO WRITTEN RECORDS; CONFIDENTIALITY

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1999, c. 57, §A1 (RP).

## §1717. REPORTS

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1999, c. 57, §A1 (RP).

## §1718. EFFECTIVE DATE

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1999, c. 57, §A1 (RP).

## §1719. ADMINISTRATION AND ENFORCEMENT

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1985, c. 267, §1 (AMD). 1999, c. 57, §A1 (RP).

## §1720. CHEMICAL INFORMATION AND TRAINING ASSISTANCE PROGRAM

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1985, c. 170, §1 (AMD). 1987, c. 559, §B12 (AMD). 1987, c. 660, §3 (AMD). 1999, c. 57, §A1 (RP).

## §1721. CONFIDENTIALITY OF INFORMATION

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1985, c. 494, §3 (AMD). 1999, c. 57, §A1 (RP).

## §1722. PENALTY

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1999, c. 57, §A1 (RP).

## §1723. PROHIBITED PRACTICES; REMEDY

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1999, c. 57, §A1 (RP).

## §1724. REPORT TO LEGISLATURE

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1985, c. 170, §2 (AMD). 1987, c. 559, §B13 (AMD). 1999, c. 57, §A1 (RP).

## §1725. LEGISLATIVE REVIEW

***(REPEALED)***

SECTION HISTORY
1983, c. 823, §2 (NEW). 1999, c. 57, §A1 (RP).

# Chapter 25: WORKFORCE INVESTMENT

## Subchapter 1: GENERAL PROVISIONS

### §2001. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 258, §1 (NEW).]

**1**. **Act.**

[ 2003, c. 114, §5 (RP) .]

**2**. **Commissioner.** "Commissioner" means the Commissioner of Labor.

[ 1983, c. 258, §1 (NEW) .]

**3**. **Job Training Partnership Fund.**

[ 2003, c. 114, §5 (RP) .]

**4**. **Local area and local board.** "Local area" and "local board" have the same meanings as provided in the Workforce Investment Act.

[ 2003, c. 114, §5 (NEW) .]

**5**. **Workforce Investment Act.** "Workforce Investment Act" means the federal Workforce Investment Act of 1998, Public Law 105-220.

[ 2003, c. 114, §5 (NEW) .]

SECTION HISTORY
1983, c. 258, §1 (NEW). 2003, c. 114, §5 (AMD).

### §2002. JOB TRAINING PARTNERSHIP FUND

***(REPEALED)***

SECTION HISTORY
1983, c. 258, §1 (NEW). 1983, c. 480, §B28 (AMD). 2003, c. 114, §6 (RP).

### §2003. AUTHORITY OF COMMISSIONER

The commissioner may enter into agreements with agencies of the Federal Government, State Government or county government as required for the purpose of implementing the Workforce Investment Act. [2003, c. 114, §7 (AMD).]

SECTION HISTORY
1983, c. 258, §1 (NEW). 2003, c. 114, §7 (AMD).

### §2004. AUTHORITY OF LEGISLATURE

***(REPEALED)***

SECTION HISTORY
1983, c. 258, §1 (NEW). 1987, c. 466, §2 (AMD). 1987, c. 542, §§F3,F5 (AMD). 2003, c. 114, §8 (RP).

## §2004-A. AUTHORITY OF LEGISLATURE

The Legislature has general authority to oversee implementation of the Workforce Investment Act, including, but not limited to, authority to: [2003, c. 114, §9 (NEW).]

**1**. **Review plans.** Review plans, policies and standards proposed by a local board, the State Workforce Investment Board, the Governor or any other agency under the Workforce Investment Act before final approval by the responsible entity;

[ 2011, c. 627, §1 (AMD) .]

**2**. **Review evaluations.** Review the procedures and findings of evaluations of the effectiveness of the State's implementation of the Workforce Investment Act; and

[ 2003, c. 114, §9 (NEW) .]

**3**. **Receive reports.** Receive reports prepared by the State Workforce Investment Board, a local board, the Governor or any agency in connection with implementation of the Workforce Investment Act, including the report required by section 3101.

[ 2011, c. 627, §2 (AMD) .]

SECTION HISTORY
2003, c. 114, §9 (NEW). 2011, c. 627, §§1, 2 (AMD).

## §2005. ESTABLISHMENT OF THE HUMAN RESOURCE DEVELOPMENT COUNCIL

***(REPEALED)***

SECTION HISTORY
1987, c. 542, §§F4,F5 (NEW). 1987, c. 769, §A108 (AMD). 1989, c. 200, §§1-5 (AMD). 1989, c. 443, §79 (AMD). 1989, c. 878, §A73 (AMD). 1997, c. 410, §11 (RP).

## §2006. ESTABLISHMENT OF STATE WORKFORCE INVESTMENT BOARD

**1**. **Responsibilities.** The State Workforce Investment Board, referred to in this section as "the board," is established to ensure that the State's workforce development system helps Maine people and businesses compete successfully in the global economy. Specific responsibilities include but are not limited to:

A. Performing all of the duties and responsibilities of the state board as defined in the Workforce Investment Act, 29 United States Code, Section 2801, including, but not limited to, the duties and responsibilities set forth in subsection 5-D; [2003, c. 114, §10 (AMD).]

B. Recommending to the Governor a state workforce development plan designed to maximize utilization and effectiveness of state workforce development services; [2003, c. 114, §10 (AMD).]

C. Monitoring agency and system-wide strategic goals based on the statewide workforce development policy and strategic plan and evaluating progress toward meeting those goals; [1997, c. 410, §12 (NEW); 1997, c. 410, §13 (AFF).]

D. Providing recommendations to the Governor and the Legislature that would improve system effectiveness and reduce system fragmentation; [1997, c. 410, §12 (NEW); 1997, c. 410, §13 (AFF).]

E. Creating greater coordination between economic development and human resource development and education programs; [2003, c. 114, §10 (AMD).]

F. Ensuring a balance between rural and urban workforce development; [2003, c. 114, §10 (AMD).]

G. Providing policy oversight and recommendations to ensure the effectiveness of vocational programs for people with disabilities in order to support efforts that reduce barriers to employment; [2003, c. 114, §10 (NEW).]

H. Providing policy oversight and recommendations to ensure that self-employment, microenterprise and small business are part of the overall workforce development strategy; [2003, c. 114, §10 (NEW).]

I. Providing policy recommendations to ensure the effectiveness of work-related programs and services for youth, including youth with disabilities; and [2003, c. 114, §10 (NEW).]

J. Providing policy recommendations to ensure the effectiveness of work-related programs and services for "at-risk" youth. [2003, c. 114, §10 (NEW).]

[ 2011, c. 627, §3 (AMD) .]

**2**. **Membership.** The board consists of members appointed by the Governor.

A. [2009, c. 12, §1 (RP).]

B. Appointments must be consistent with the representation requirements of the Workforce Investment Act, including representatives from business and industry, organized labor, state agencies responsible for human resource programs and educational and community-based institutions. [2003, c. 114, §10 (AMD).]

The Governor shall ensure that the board and the Program Policy Committee under subsection 7 have sufficient expertise to effectively carry out the duties and functions of the board.

[ 2011, c. 627, §3 (AMD) .]

**3**. **Terms of members.** One third of the initial appointees shall serve for a one-year term, 1/3 of the initial appointees shall serve for a 2-year term and 1/3 shall serve for a 3-year term. All subsequent appointees shall serve 3-year terms.

[ 1997, c. 410, §12 (NEW); 1997, c. 410, §13 (AFF) .]

**4**. **Chair and vice-chair.** The Governor shall appoint a chair and vice-chair from the membership of the board to serve for a one-year term. The Governor may reappoint members to serve as chair or vice-chair.

[ 2011, c. 627, §3 (AMD) .]

**5**. **Functions and duties of the council.**

[ 2003, c. 114, §11 (RP) .]

**5-A**. **Apprenticeship.**

[ 2011, c. 491, §9 (RP); 2011, c. 627, §3 (RP) .]

**5-B**. **Commission on Disability and Employment.** In addition to its other duties, the board, through its Commission on Disability and Employment, a standing committee created pursuant to subsection 7, paragraph A, subparagraph (2) and referred to in this subsection as "the standing committee," shall perform the duties of the former Governor's Committee on Employment of People with Disabilities.

A. The standing committee shall:

(1) Advise, consult and assist the executive and legislative branches of State Government on activities of State Government that affect the employment of disabled individuals. The standing committee is solely advisory in nature. The standing committee may advise regarding state and federal plans and proposed budgetary, legislative or policy actions affecting disabled individuals;

(2) Serve as an advocate on behalf of disabled citizens promoting and assisting activities designed to further equal opportunity for people with disabilities;

(3) Conduct educational programs considered necessary to promote public understanding of the employment-related needs and abilities of disabled citizens of this State;

(4) Provide information, training and technical assistance to promote greater employer acceptance of disabled workers;

(5) Advise and assist employers and other organizations interested in developing employment opportunities for disabled people; and

(6) Work with state and local government officials, organizations representing persons with disabilities and the business community to inform the public of the benefits of making facilities and services accessible to and usable by individuals with disabilities. [2011, c. 627, §3 (AMD).]

B. The standing committee shall administer in accordance with current fiscal and accounting regulations of the State, and in accordance with the philosophy, objectives and authority of this subsection, any funds appropriated for expenditure by the standing committee or any grants or gifts that may become available and are accepted and received by the standing committee. [2011, c. 627, §3 (AMD).]

C. The standing committee shall submit an annual report directly to the Governor and the Legislature not later than September 1st of each year concerning its work, recommendations and interest of the previous fiscal year and future plans. The standing committee shall make any interim reports it considers advisable. [2011, c. 627, §3 (AMD).]

D. The standing committee shall keep minutes of all meetings, including a list of people in attendance. [2011, c. 627, §3 (AMD).]

E. The standing committee may employ, subject to the Civil Service Law, the staff necessary to carry out its objectives. The standing committee may employ consultants and contract for projects it determines necessary. To the extent feasible and reasonable, the standing committee must be given the staff, facilities, equipment, supplies, information and other assistance required to carry out its activities. [2011, c. 627, §3 (AMD).]

F. The standing committee may make necessary rules, consistent with this subsection, for promoting its purposes. [2011, c. 627, §3 (AMD).]

G. [2013, c. 467, §6 (RP).]

[ 2013, c. 467, §6 (AMD) .]

**5-C**. **Occupational information.**

[ 2011, c. 627, §3 (RP) .]

**5-D**. **Workforce investment.** In addition to its other duties, the board shall perform the duties of the state board under the Workforce Investment Act, referred to in this subsection as "the Act."

A. The board shall assist the Governor in:

(1) Developing and continuously improving a statewide system of activities funded under the Act or carried out through a one-stop delivery system described in Section 134(c) of the Act including review of local plans and development of linkages to ensure coordination and nonduplication among the programs and activities with required and optional partners described in Section 121(b) of the Act;

(2) Designating local areas as required in Section 116 of the Act;

(3) Developing allocation formulas for the distribution to local areas of funds for youth activities and adult employment and training activities as allowed under Sections 133(b)(3)(B) and 128(b)(3)(B) of the Act;

(4) Developing and continuously improving comprehensive state performance measures including state-adjusted levels of performance to assess the effectiveness of the workforce investment activities of the State as required under Section 136(b) of the Act;

(5) Developing an application for an incentive grant under Section 503 of the Act;

(6) Preparing an annual report to the United States Secretary of Labor as described in Section 136(d) of the Act;

(7) Evaluating measures taken pursuant to Section 113(b)(14) of the federal Carl D. Perkins Vocational and Applied Technology Education Act, 20 United States Code, Section 2323(b)(14); and

(8) Developing the statewide statistics system described in Section 15(e) of the federal Wagner-Peyser Act, 29 United States Code, Section 491-2(e). [2011, c. 627, §3 (AMD).]

B. The board has the necessary authority to carry out the purposes of this section. [2011, c. 627, §3 (AMD).]

C. The commissioner may appoint employees necessary to carry out the board's responsibility under this subsection. [2011, c. 627, §3 (AMD).]

D. The commissioner may adopt routine technical rules, in accordance with Title 5, chapter 375, subchapter 2-A necessary to carry out the board's responsibility under this subsection. [2011, c. 627, §3 (AMD).]

[ 2011, c. 627, §3 (AMD) .]

**6**. **Powers.** The board has the necessary authority to carry out the purposes of this section.

[ 2011, c. 627, §3 (AMD) .]

**7**. **Committee structure.** The board has the following committee structure.

A. The board shall create 6 standing committees. The standing committees shall make recommendations to the full board. The 6 standing committees are as follows:

(1) Younger workers;

(2) Commission on Disability and Employment;

(3) Women's employment issues;

(4) Older workers;

(5) Veterans employment; and

(6) The Program Policy Committee. Organizations with representation on the Program Policy Committee may include, but are not limited to, organizations that conduct programs or activities as specified in Section 121(b) of the Workforce Investment Act. [2013, c. 467, §7 (RPR).]

B. The board may create committees in addition to those in paragraph A to address specific problems and issues. These committees shall make recommendations to the full board. [2013, c. 467, §7 (RPR).]

D. The standing committees under paragraph A may receive and accept, from any source, allocations, appropriations, loans, grants and contributions of money or other things of value to be held, used or applied to carry out this section, subject to the conditions upon which the loans, grants and contributions may be made, including, but not limited to, appropriations, allocations, loans, grants or gifts from a private source, federal agency or governmental subdivision of the State or its agencies. [2013, c. 467, §7 (NEW).]

[ 2013, c. 467, §7 (RPR) .]

**8**. **Meetings.** The board shall meet at such times and such places as it considers necessary. The meetings must be publicly announced and open to the general public. A majority of members of the board constitutes a quorum for the transaction of business.

[ 2011, c. 627, §3 (AMD) .]

**9**. **Administration.** The Department of Education and the Department of Labor shall jointly administer the board. The Department of Labor is the fiscal agent for the board. Pursuant to the Commissioner of Labor's authority under section 1401-B and to the Commissioner of Education's authority under Title 20-A, section 253, subsection 2, the Commissioner of Labor and the Commissioner of Education may designate employees they consider necessary to carry out the State's responsibility under this section.

The Commissioner of Education and the Commissioner of Labor are authorized to adopt joint rules as may be necessary to carry out the State's responsibility under this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

The board shall establish bylaws for its governance. These bylaws are subject to the Governor's approval.

[ 2011, c. 627, §3 (AMD) .]

**10**. **Compensation.** Members of the board receive no compensation for their services. Reimbursement of necessary expenditures incurred in the performance of their duties on the board, which are allowed by state law, are administered by the Department of Labor from federal or state appropriations.

[ 2011, c. 627, §3 (AMD) .]

SECTION HISTORY
1997, c. 410, §12 (NEW). 1997, c. 410, §13 (AFF). 1997, c. 683, §§D7-10 (AMD). 1999, c. 6, §§1,2 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 114, §§10-13 (AMD). 2003, c. 545, §§4,5 (REV). 2003, c. 689, §B6 (REV). 2009, c. 12, §§1, 2 (AMD). 2011, c. 491, §§9, 10 (AMD). 2011, c. 627, §3 (AMD). 2011, c. 655, Pt. EE, §18 (AMD). 2011, c. 655, Pt. EE, §30 (AFF). 2013, c. 424, Pt. A, §15 (AMD). 2013, c. 467, §§6, 7 (AMD).

## §2007. FUNDING

Funds received from the United States pursuant to the Workforce Investment Act must be deposited in the Employment Services Activity program account within the Department of Labor. Funds must be deposited, administered and disbursed in the same manner and under the same conditions and requirements as provided by law for other federal funds in the State Treasury. The commissioner shall ensure that

management and use of the federal funds comply with the requirements of the Workforce Investment Act. Federal funds in the account do not lapse but must be carried forward to be used to implement the Workforce Investment Act. [2003, c. 114, §14 (NEW).]

SECTION HISTORY
2003, c. 114, §14 (NEW).

## Subchapter 2: JOB TRAINING PROGRAM

### §2011. FUNDS

***(REPEALED)***

SECTION HISTORY
1987, c. 466, §3 (NEW). 1987, c. 775, §1 (AMD). 1995, c. 665, §DD12 (AFF). 1995, c. 665, §DD4 (RP).

### §2012. LOCAL PLANS

***(REPEALED)***

SECTION HISTORY
1987, c. 466, §3 (NEW). 1987, c. 775, §2 (AMD). 1989, c. 532, §1 (AMD). 1995, c. 665, §DD12 (AFF). 1995, c. 665, §DD4 (RP).

### §2013. PROGRAM ACTIVITIES

***(REPEALED)***

SECTION HISTORY
1987, c. 466, §3 (NEW). 1987, c. 856, §8 (AMD). 1989, c. 532, §2 (AMD). 1993, c. 385, §23 (AMD). RR 1995, c. 1, §24 (COR). 1995, c. 665, §DD12 (AFF). 1995, c. 665, §DD4 (RP).

### §2013-A. APPEAL PROCEDURE

***(REPEALED)***

SECTION HISTORY
1989, c. 532, §3 (NEW). 1995, c. 665, §DD12 (AFF). 1995, c. 665, §DD4 (RP).

### §2014. TRAINING AND SERVICES

***(REPEALED)***

SECTION HISTORY
1987, c. 466, §3 (NEW). 1995, c. 665, §DD12 (AFF). 1995, c. 665, §DD4 (RP).

### §2015. PARTICIPANT ELIGIBILITY

***(REPEALED)***

SECTION HISTORY
1987, c. 466, §3 (NEW). 1989, c. 532, §4 (AMD). 1995, c. 665, §DD12 (AFF). 1995, c. 665, §DD4 (RP).

## §2015-A. STRATEGIC TRAINING FOR ACCELERATED REEMPLOYMENT PROGRAM

***(REPEALED)***

SECTION HISTORY
1987, c. 775, §3 (NEW). 1987, c. 861, §§22,23 (AMD). 1989, c. 2, (AMD). 1989, c. 408, §§1,2 (AMD). 1989, c. 541, §§1-14 (AMD). 1989, c. 878, §§A74,75 (AMD). 1993, c. 630, §B11 (AMD). 1995, c. 665, §DD12 (AFF). 1995, c. 665, §DD4 (RP).

## §2016. EMPLOYER ELIGIBILITY

***(REPEALED)***

SECTION HISTORY
1987, c. 466, §3 (NEW). 1995, c. 665, §DD12 (AFF). 1995, c. 665, §DD4 (RP).

## §2017. ANNUAL REPORT

***(REPEALED)***

SECTION HISTORY
1987, c. 466, §3 (NEW). 1989, c. 532, §§5,6 (AMD). 1995, c. 665, §DD12 (AFF). 1995, c. 665, §DD4 (RP).

# Subchapter 3: NONTRADITIONAL OCCUPATION ACT

## §2021. SHORT TITLE

This subchapter may be known and cited as the "Nontraditional Occupation Act." [1991, c. 807, §2 (NEW).]

SECTION HISTORY
1991, c. 807, §2 (NEW).

## §2022. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 807, §2 (NEW).]

**1**. **Department.** "Department" means the Department of Labor.

[ 1991, c. 807, §2 (NEW) .]

**2**. **Nontraditional occupation.** "Nontraditional occupation" means:

A. For a female participant, an occupation in which 25% or less of the people in that occupation are females according to the United States Department of Labor; and [1991, c. 807, §2 (NEW).]

B. For a male participant, an occupation in which 25% or less of the people in that occupation are males according to the United States Department of Labor. [1991, c. 807, §2 (NEW).]

[ 1991, c. 807, §2 (NEW) .]

SECTION HISTORY
1991, c. 807, §2 (NEW).

## §2023. DEPARTMENT DUTIES

Notwithstanding subchapters I and II, the department shall encourage pursuit of nontraditional occupations by: [1991, c. 807, §2 (NEW).]

**1**. **Support services.** Providing necessary support services to participants, including but not limited to:

A. Payment for dependent care costs, as long as those costs do not exceed the prevailing regional rate for that care; [1991, c. 807, §2 (NEW).]

B. Training materials such as books, tools and uniforms; and [1991, c. 807, §2 (NEW).]

C. Travel payments according to the policies established by the service providers under the Workforce Investment Act; [2003, c. 114, §15 (AMD).]

[ 2003, c. 114, §15 (AMD) .]

**2**. **Orientation program.** Ensuring that the applicable orientation program includes nontraditional occupations and a means of assessing interest in nontraditional occupations;

[ 1991, c. 807, §2 (NEW) .]

**3**. **Ongoing support systems.** Working with community organizations to develop ongoing support systems for participants who receive training in nontraditional occupations;

[ 1991, c. 807, §2 (NEW) .]

**4**. **Staff training.** Training staff on nontraditional occupations issues including differences in the economic status of men and women; the social, personal and economic barriers encountered in training and job placement and on the job by individuals pursuing nontraditional occupations; methods for recruiting individuals for nontraditional occupations; and the need for continuing support for individuals in nontraditional occupations; and

[ 1991, c. 807, §2 (NEW) .]

**5**. **Rulemaking.** Making rules in accordance with the Maine Administrative Procedure Act as necessary to establish procedures implementing this subchapter.

[ 1991, c. 807, §2 (NEW) .]

SECTION HISTORY
1991, c. 807, §2 (NEW). 2003, c. 114, §15 (AMD).

## §2024. DEPARTMENT GOALS

The Commissioner of Labor shall annually forward to the joint standing committee of the Legislature having jurisdiction over labor matters measurable goals showing continued reasonable progress that address enhancement of nontraditional training opportunities for citizens of the State. [1991, c. 807, §2 (NEW).]

SECTION HISTORY
1991, c. 807, §2 (NEW).

## §2025. REPORT

The Department of Labor must provide monthly written reports to the joint standing committee of the Legislature having jurisdiction over labor matters, commencing August 1, 1992. The reports must include statistics on overall participation in training programs, reported by gender; participation in nontraditional occupation training, reported by gender; and expenditures for each support service specified in section 2023, subsection 1 reported by gender for nontraditional occupation training participants; and expenditures for each activity specified in section 2023, subsections 2 to 4. The Department of Labor shall report annually in person to the joint standing committee of the Legislature having jurisdiction over labor matters, beginning February, 1993. The annual report on activities provided under this subchapter must include statistics by site or contract on participation; success rate in training and placement in further training and employment, including, but not limited to, data on the age and sex of participants and their job title and description; wage at the time of placement; and examples of assessment tools developed. [1991, c. 807, §2 (NEW).]

SECTION HISTORY
1991, c. 807, §2 (NEW).

# Subchapter 4: GOVERNOR'S JOBS INITIATIVE PROGRAM

## §2031. GOVERNOR'S JOBS INITIATIVE PROGRAM

**1**. **Program established.** The Governor's Jobs Initiative Program, referred to in this section as the "program," is established to encourage high-quality job creation and expansion by directly linking the education and training resources of this State to job opportunities. To the extent of available resources, the program develops and coordinates training for firms intending to expand or locate in this State, reorganize a workplace to remain competitive or upgrade worker skills by providing essential work competencies such as computer literacy, problem-solving strategies, critical thinking skills, math and science proficiency and team-building skills.

[ 2011, c. 573, §2 (AMD) .]

**2**. **Administration.** The program is administered jointly by the Department of Labor and the Department of Economic and Community Development under rules and operating procedures adopted by the Commissioner of Labor and the Commissioner of Economic and Community Development. Administrative costs are limited to 5% of program funds.

[ 1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF) .]

**3**. **Interdepartmental review team.** An application for funding under the program must be reviewed by an interdepartmental review team. The review team consists of 2 representatives from the Department of Labor, one of whom must be from the Center for Workforce Research and Information, and 2 representatives from the Department of Economic and Community Development.

[ 2007, c. 126, §2 (AMD) .]

**4**. **Criteria for program funding.** The following criteria must be demonstrated to the committee by an applicant at the time of application. An applicant shall:

A. Work with the Department of Labor to analyze the occupational skills of the unemployed work force in the designated labor market; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

B. Provide a statement of commitment to long-term operation in this State; and [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

C. Comply with any other criteria that has been adopted by the Commissioner of Labor in accordance with the Maine Administrative Procedure Act. [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

[ 1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF) .]

**5**. **Selection preference.** Preference must be given to an applicant that substantiates one or more of the following at the time of application:

A. Formation of a local project partnership; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

B. Employer willingness to leverage matching funds; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

C. Investment in the lifelong learning and skills development of citizens of this State; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

D. An increase in the local education and training capacity to support more than one employer that is caused by a proposed project; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

E. Provision of high-wage or high-skill employment, employee benefits and job security; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

F. Employer intention to expand or locate in economically depressed areas of this State; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

G. Employer willingness to hire new labor force entrants, economically disadvantaged individuals, persons with disabilities or dislocated workers; or [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

H. Employer willingness to provide a registered apprenticeship for current employees or new hires. [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

[ 1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF) .]

**6**. **Services.** Services that may be funded by the program include, but are not limited to:

A. Recruitment; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

B. Screening and assessment; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

C. Workplace literacy; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

D. Workplace safety; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

E. Technical training; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

F. On-the-job training; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

G. Higher education; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

H. Essential work competencies; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

I. Job task analysis; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

J. Coordination of employer consortia to access specialized training; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

K. Technical assistance on work force capacity issues; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

L. Technical assistance on worker training plans; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

M. Small business training and technical assistance; and [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

N. Supportive services. [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

[ 1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF) .]

**7**. **Program standards.** The standards used by the Department of Labor and the Department of Economic and Community Development to evaluate the success of a project must include, but are not limited to:

A. The number of jobs created or retained in the project and participant demographics; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

B. The cost per participant; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

C. The average wage paid and benefits provided to participants at training completion; [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

D. The skills required by the participant to obtain jobs through the program; [2011, c. 573, §2 (AMD).]

E. The number and percentage of participants who do not complete each program; and [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

F. The return on investment. [1995, c. 665, Pt. DD, §5 (NEW); 1995, c. 665, Pt. DD, §12 (AFF).]

[ 2011, c. 573, §2 (AMD) .]

**8**. **Eligibility for funding.** Applicants eligible to receive funding from the program include, but are not limited to, employers, regional and local economic development agencies or partnerships, community-based organizations, job training service providers, registered apprenticeship service providers, local adult education providers and postsecondary education institutions.

An applicant that is not a business shall demonstrate, in partnership with a business or a consortium of businesses, the ability to link training services with actual job creation, expansion, upgrade or retention. Training provided under this section is considered approved training under the unemployment insurance laws and the laws regarding dislocated workers administered by the Department of Labor.

Training funds authorized under this section must be paid to the employer on a reimbursement basis.

[ 2009, c. 213, Pt. JJJ, §1 (AMD) .]

**9**. **Report.** For any year in which the program is funded, the Commissioner of Labor and the Commissioner of Economic and Community Development shall provide to the joint standing committee of the Legislature having jurisdiction over labor, commerce, research and economic development matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs

an annual report by March 1st of the next year, which must include, for each business assisted under this subchapter, the name and location of the business, the number of individuals trained or retrained, the dollar amount expended and, when applicable, the number of new jobs created.

[ 2011, c. 573, §2 (AMD) .]

**10**. **Rules.** Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2011, c. 573, §2 (AMD) .]

**11**. **Nonlapsing funds.** Any unencumbered balance of General Fund appropriations remaining at the end of each fiscal year in this program may not lapse but must be carried forward to be used for the same purposes.

[ 1999, c. 731, Pt. K, §2 (NEW) .]

SECTION HISTORY
1995, c. 665, §DD5 (NEW). 1995, c. 665, §DD12 (AFF). 1999, c. 731, §K2 (AMD). 2007, c. 126, §2 (AMD). 2007, c. 539, Pt. RRR, §1 (AMD). 2009, c. 213, Pt. JJJ, §1 (AMD). 2011, c. 573, §2 (AMD).

## Subchapter 5: COMPETITIVE SKILLS SCHOLARSHIP PROGRAM

## §2033. COMPETITIVE SKILLS SCHOLARSHIP PROGRAM

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

**1**. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Department" means the Department of Labor. [2007, c. 352, Pt. A, §3 (NEW).]

B. "Fund" means the Competitive Skills Scholarship Fund established in accordance with section 1166. Money in the fund may be used to pay for the operation, services and assistance provided through the Competitive Skills Scholarship Program as well as certain costs associated with the administration of the program. [2007, c. 352, Pt. A, §3 (NEW).]

C. "Participant" means an eligible individual enrolled in the program. [2007, c. 352, Pt. A, §3 (NEW).]

D. "Plan" means the individual career plan that must be provided to each eligible participant in accordance with subsection 8. [2007, c. 352, Pt. A, §3 (NEW).]

E. "Program" means the Competitive Skills Scholarship Program established in subsection 2. [2007, c. 352, Pt. A, §3 (NEW).]

[ 2007, c. 352, Pt. A, §3 (NEW) .]

**2**. **Program established.** The department shall establish and administer an employment training program known as the Competitive Skills Scholarship Program. The purpose of the program is to provide individuals with access to education, training and support leading to skilled, well-compensated jobs with anticipated high employment demand, to improve the economic well-being of the participants in the program and to provide employers with a skilled labor force in accordance with the provisions of this section.

The commissioner may expend funds through the department's career centers from the fund for the costs of education, training and support in accordance with subsection 6, for career counseling and for the administration of the program. Career counseling must include developing a plan and assisting a participant in

accessing the support necessary for the participant to participate in the plan. The commissioner shall establish a limit on or a formula that limits the proportion of program funds that are expended on career counseling and for administration.

[ 2015, c. 402, §1 (AMD) .]

**3**. **Notice.** The department shall provide notice, including individual written notice, signs and other effective outreach methods, to inform people of the program and the education, training and support available from or through the program to individuals seeking work, education or training in the department's career centers.

[ 2007, c. 352, Pt. A, §3 (NEW) .]

**4**. **Criteria for education and training approved under the program.** Education or training for a participant must meet the criteria set out in this subsection.

A. The education or training provided through the program must be for employment in industries with significant demand for skilled labor that have been:

(1) Identified by the Center for Workforce Research and Information as providing opportunity for employment in jobs with high compensation;

(2) Recommended by the State Workforce Investment Board; and

(3) Approved by the Governor or the Governor's designee. [2011, c. 627, §4 (AMD).]

B. Education or training approved under this section must result in a postsecondary certificate, degree or similar credential that is universally recognized and accepted by the trade or industry in which the participant intends to seek employment and that is likely to provide opportunity for employment in jobs that will provide substantial improvement in the participant's earnings and benefits. [2007, c. 352, Pt. A, §3 (NEW).]

[ 2011, c. 627, §4 (AMD) .]

**5**. **Eligibility criteria.** Within the limits of available program resources, enrollment in the program must be granted if the individual applying for enrollment:

A. Is at least 18 years old; [2007, c. 352, Pt. A, §3 (NEW).]

B. Does not have a marketable postsecondary degree; [2007, c. 352, Pt. A, §3 (NEW).]

C. Has income less than 200% of the federal poverty level for the family size involved; [2007, c. 352, Pt. A, §3 (NEW).]

D. Is applying for education or training for a job in an industry approved under subsection 4; and [2007, c. 352, Pt. A, §3 (NEW).]

E. Has the aptitude to undertake and complete education or training as determined by the institution providing the education or training. [2007, c. 352, Pt. A, §3 (NEW).]

[ 2007, c. 352, Pt. A, §3 (NEW) .]

**5-A**. (TEXT EFFECTIVE UNTIL 1/1/20) (TEXT REPEALED 1/1/20) **Secondary student eligibility.** Notwithstanding subsection 5, paragraph A, before January 1, 2020, a full-time student at a public secondary school enrolled in a career and technical education program at a career and technical education center or a career and technical education region may be granted enrollment in the program if the student applies for enrollment and meets the requirements of subsection 5, paragraphs B, C, D and E. For the purpose of determining eligibility under subsection 5, paragraph C, "income" includes the income of the student's family as defined by department rule.

The commissioner may not expend, on an annualized basis, more than 15% of the annual revenue to the fund for tuition, other allowable costs and administration and case management for students enrolled in the program under this subsection and the costs for any of these students who continue to participate in the program after attaining 18 years of age.

This subsection is repealed January 1, 2020.

[ 2015, c. 257, §1 (NEW) .]

**6**. **Provision of education, training and support.** Payment for education, training and support included in a participant's plan must be furnished promptly to, or on behalf of, a participant.

A. The program must provide to a participant, in accordance with rules adopted by the department, when education, training and support are not reasonably available from another recognized program and are necessary to carry out that participant's plan:

(1) Books, supplies, tools and equipment required by the participant's plan;

(2) Child care, transportation and other necessary support as determined by the department; and

(3) Assistance needed to obtain remedial or prerequisite education necessary for the participant to participate successfully in the program.

Money for mandatory fees or tuition may not be provided unless the participant is not eligible for necessary funds from other public grants or scholarships reasonably available to the participant for this purpose. [2007, c. 352, Pt. A, §3 (NEW).]

B. The department shall establish by rule a maximum limit on the amount of assistance available to participants. This limit may be waived by the commissioner if the commissioner determines it is necessary, prudent and consistent with the goals of the program under the circumstances. [2007, c. 352, Pt. A, §3 (NEW).]

[ 2007, c. 352, Pt. A, §3 (NEW) .]

**7**. **Application; decision; appeal.** An individual must be given the opportunity to make a written application for education, training and support available from the program and be given a prompt written decision from the department specifically indicating the type and amount of services approved or denied. Any decision related to eligibility for, or the provision of, services under this section must provide notice that the decision may be appealed by the individual through a request for a hearing within 30 days of receipt of the decision in accordance with rules adopted by the department and consistent with Title 5, chapter 375, subchapter 4. The 30-day appeal period may be extended up to 15 additional days if the claimant can show good cause for failing to appeal within the initial 30-day period.

[ 2007, c. 352, Pt. A, §3 (NEW) .]

**8**. **Individual career plan.** This subsection governs the development of a plan for a participant.

A. When an individual's application for the program is approved, an individual career plan must be developed by the program with the eligible individual consistent with the provisions of this section and must reflect, to the maximum extent feasible, the preferences of the participant, within the confines of the goals associated with this subchapter. A plan may be modified when necessary to assist a participant to participate successfully in the program. The plan must include the education or training program approved, the degree or credential expected at program completion and the services and support to be provided under the plan. [2007, c. 352, Pt. A, §3 (NEW).]

B. Prior to the establishment of a plan, a participant must be given:

(1) A description of the program, including a list of services and supports available through the program and nontraditional employment opportunities, so that the participant may identify a suitable employment goal and the services needed to participate in the program;

(2) The opportunity to learn about and examine relevant labor market information related to identified industries and the participant's employment preference;

(3) If the participant's employment goal is an occupation for which an apprenticeship may be available, information about the department's apprenticeship program under chapter 33; and

(4) Information about and assistance in applying for other services that will assist the participant in succeeding in the plan and prevent any unnecessary expenditure of resources by the program, including federal financial aid provided under the federal Higher Education Act of 1965, 20 United States Code, Chapter 28; the state and federal earned income tax credit; health care resources; unemployment compensation; dislocated worker benefits; trade adjustment assistance; and other services available from other departments of State Government including the Department of Health and Human Services. [2007, c. 352, Pt. A, §3 (NEW).]

[ 2007, c. 352, Pt. A, §3 (NEW) .]

**9**. **Rules.** The commissioner shall adopt rules to implement the program in a manner that maximizes successful education and training opportunities for participants and to provide for its fair and efficient administration in accordance with this section. Rules adopted under this subsection are routine technical rules and must be adopted in accordance with Title 5, chapter 375, subchapter 2-A.

[ 2007, c. 352, Pt. A, §3 (NEW) .]

**10**. **Monitoring, evaluation and annual report.** The department shall implement a comprehensive evaluation strategy that evaluates the fund, using both quantitative and qualitative data and including an analysis of the return on investment in the fund. The evaluation must consider, at a minimum, the following factors: the value of total compensation, including, but not limited to, health insurance and other benefits to those participating in training; the impact of the program on the Unemployment Compensation Fund; the impact on productivity and performance for employers; and the impact on meeting the demand for skilled workers in industries in this State. The evaluation must measure the impact of the program over time, including a longitudinal analysis that captures productivity and other outcomes related to the program. The department must submit a report to the joint standing committee of the Legislature having jurisdiction over labor matters by February 1st of each year on the status of the program and on the evaluation data collected and analyzed. The report also must include the formula or limit established by the commissioner pursuant to subsection 2 to limit the proportion of program funds expended on career counseling and administration and the amount of funds expended for these purposes.

[ 2015, c. 402, §2 (AMD) .]

**11**. **Enrollment of eligible supplemental nutrition assistance program participants.** The department shall enroll, to the maximum extent possible and when appropriate, participants in the federal supplemental nutrition assistance program administered by the State pursuant to Title 22, section 3104 who meet the eligibility criteria specified in subsection 5 and who are referred to the program pursuant to a memorandum of agreement entered into by the State with the Department of Health and Human Services as part of the individual’s self-sufficiency plan under the federal supplemental nutrition assistance program administered by the State pursuant to Title 22, section 3104. Federal funds may not be used to supplant state funds used to provide education, training and support under this section to program participants enrolled pursuant to this subsection.

[ 2013, c. 422, §2 (NEW) .]

SECTION HISTORY
2007, c. 352, Pt. A, §3 (NEW). 2007, c. 506, §2 (AMD). 2011, c. 627, §4 (AMD). 2013, c. 422, §§1, 2 (AMD). 2013, c. 502, Pt. O, §1 (AMD). 2015, c. 257, §1 (AMD). 2015, c. 402, §§1, 2 (AMD).

# Chapter 26: TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

## §2051. TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

The Department of Labor may administer and operate a program of trade adjustment assistance to workers as provided under United States Trade Act of 1974, Title II, Chapter 2, Public Law 93-618, Title 19, United States Code, Sections 2271 to 2322, referred to in this subchapter as the Act and any amendments and additions to the Act. The commissioner may promulgate rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, to establish procedures implementing the Act. [1985, c. 346, §2 (NEW).]

SECTION HISTORY
1985, c. 346, §2 (NEW).

## §2052. SUITS BY THE COMMISSIONER

The commissioner shall bring an action on behalf of one or more employees in any court of competent jurisdiction to challenge any adverse determination on a petition for certification, or part thereof, filed under the Act when he believes that determination to be erroneous. [1985, c. 346, §2 (NEW).]

SECTION HISTORY
1985, c. 346, §2 (NEW).

## §2053. COMMISSIONER'S REPORT

***(REPEALED)***

SECTION HISTORY
1985, c. 346, §2 (NEW). 2003, c. 114, §16 (RP).

# Chapter 26-A: PEER SUPPORT PROGRAM FOR DISPLACED WORKERS

## §2061. PROGRAM CREATED

The Peer Support Program for Displaced Workers is created within the department to provide advocacy and information for workers displaced by significant layoffs. The program may initiate one or more projects to assist employees as provided in this chapter and as resources permit. The department is authorized to use any available resources or to apply for federal grants to implement this chapter. Any funds appropriated by the Legislature for a pilot program or this program may not lapse but must be carried forward. [1999, c. 506, §1 (NEW); 1999, c. 506, §3 (AFF).]

SECTION HISTORY
1999, c. 506, §1 (NEW). 1999, c. 506, §3 (AFF).

## §2062. PEER SUPPORT PROJECTS

**1**. **Initiation of project.** When 100 or more employees of a single employer are laid off, the department shall initiate a peer support project to assist the affected employees. The department may initiate a project when 50 or more employees are laid off if the bureau determines that a peer support project is warranted, after considering the particular needs of the affected workforce and the affected communities.

[ 1999, c. 506, §1 (NEW); 1999, c. 506, §3 (AFF) .]

**2**. **Employment and role of peer support workers.** For each project, the department shall employ one or more peer support workers who must be displaced nonmanagerial employees from the affected workforce. The department shall attempt in all cases to hire one peer support worker for each 50 affected employees and to hire at least 2 peer support workers for each project. A peer support worker shall serve as a worker advocate and an information source connecting the affected workers and the State's workforce development programs. The peer support worker shall use the resources of local employment assistance programs as well as state programs. The department shall collaborate with employee representatives in hiring and overseeing peer support workers. The department shall ensure that peer support workers have an opportunity to receive training and to work as a team even if they are geographically dispersed.

[ 1999, c. 506, §1 (NEW); 1999, c. 506, §3 (AFF) .]

**3**. **Duration of project.** The department shall determine the duration of each project, taking into consideration the size, scope and nature of the layoff and the period of time over which the layoffs occur.

[ 1999, c. 506, §1 (NEW); 1999, c. 506, §3 (AFF) .]

SECTION HISTORY
1999, c. 506, §1 (NEW). 1999, c. 506, §3 (AFF).

# Chapter 27: RAILROAD EMPLOYEE EQUITY ACT

## §2071. SHORT TITLE

This chapter shall be known and may be cited as the "Railroad Employee Equity Act." [1987, c. 327, (NEW).]

SECTION HISTORY
1987, c. 327, (NEW).

## §2072. HIRING PRIORITY

Effective January 1, 1987, any person, corporation or other entity purchasing, acquiring, leasing or otherwise obtaining from a financially related entity the right to operate a rail line or abandoned rail line in this State shall give a first right of hire to fill any subordinate official or nonmanagement position in the staffing of the new rail operation in the following order of priority: [1987, c. 327, (NEW).]

**1**. **Priority under federal law.** First, all employees who are required to be accorded priority under federal law, employee protection obligations imposed by law, regulation or contracts which require the new operator to select employees of the prior operator or existing or future collective bargaining agreements;

[ 1987, c. 327, (NEW) .]

**2**. **Seniority rights.** Second, all employees, in seniority order for each craft of class, who hold or held seniority rights on the line to be operated when last operated by its prior operator;

[ 1987, c. 327, (NEW) .]

**3**. **Railroad unemployment.** Third, employees drawing benefits under the United States Railroad Unemployment Insurance Act, United States Code, Title 45, Section 367 et seq., in the area in which the line to be operated is located, and then within the State; and

[ 1987, c. 327, (NEW) .]

**4**. **Others.** Fourth, any other individual.

[ 1987, c. 327, (NEW) .]

SECTION HISTORY
1987, c. 327, (NEW).

## §2073. QUALIFICATIONS; PRESUMPTION

Any person who is performing work on a rail line which is being sold or otherwise transferred to a new operator within this State who is entitled to priority of employment under section 2072 shall be presumed to be physically and mentally qualified to perform the same or comparable work with the new employer. [1987, c. 327, (NEW).]

SECTION HISTORY
1987, c. 327, (NEW).

## §2074. DEPRIVATION OF RIGHT; CAUSE OF ACTION

Any person who is given a first right of hire by section 2072, who is deprived of that right by the action or inaction of the new operator of the rail line, shall have a cause of action against the new operator to enforce the right of hire guarantee by this Act, and may bring such an action in the Superior Court seeking an order for damages and requiring that the complainant be hired. Any person whose rights under this Act are found to have been violated by the new operator shall receive as damages an award of back pay from the date the person should have been hired until the date actually hired or until the claimant declines a bona fide offer of employment, plus attorneys fees and all other reasonable costs of litigation. If it is shown that the new operator willfully failed to comply with section 2072, in whole or in part, for a reason which is contrary to state or federal law, the complainant shall receive an award of treble damages without any reduction for outside earnings or unemployment benefits. [1987, c. 327, (NEW).]

SECTION HISTORY
1987, c. 327, (NEW).

## §2075. NEW CAREER TRAINING ASSISTANCE

**1**. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Expenses" means actual expenses paid for room, board, tuition fees or educational material. [1987, c. 327, (NEW).]

B. "Qualified institution" means any educational institution accredited for payment by the Veterans' Administration under the United States Code, Title 38, Chapter 36, or state-accredited institution which has been in existence for not less than 2 years. [1987, c. 327, (NEW).]

[ 1987, c. 327, (NEW) .]

**2**. **Entitlement.** Any employee qualifying under section 2072, subsection 2, who applies for, but is unable to secure, a subordinate official or nonmanagement position in the staffing of the new rail operation, shall be entitled to receive, from the lessor, assignor or former owner, expenses for training in qualified institutions for new career opportunities.

[ 1987, c. 327, (NEW) .]

**3**. **Training to begin within 2 years.** To be entitled for assistance under this Act, an employee must begin his course of training within 2 years following his separation from railroad employment as a result of acquisition of a railroad described in section 2072.

[ 1987, c. 327, (NEW) .]

**4**. **Benefit amounts.** Affected employees shall be entitled to the following benefits for retraining according to their years of service on the affected railroad:

A. 0 - 5 years of service.....up to $3,000; [1987, c. 327, (NEW).]

B. 5 - 10 years of service.....up to $6,000; [1987, c. 327, (NEW).]

C. 10 - 15 years of service.....up to $9,000; [1987, c. 327, (NEW).]

D. 15 - 20 years of service.....up to $12,000; and [1987, c. 327, (NEW).]

E. 20 years of service and over.....up to $15,000. [1987, c. 327, (NEW).]

[ 1987, c. 327, (NEW) .]

SECTION HISTORY

1987, c. 327, (NEW).

# Chapter 28: MINIMUM SAFETY STANDARDS FOR FIREFIGHTERS

## §2101. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1987, c. 356, (NEW).]

**1**. **Fire department.** "Fire department" means a municipal fire department, as defined in Title 30-A, section 3151, subsection 1, or a volunteer fire association, as defined in Title 30-A, section 3151, subsection 3.

[ 1997, c. 683, Pt. A, §15 (AMD) .]

**2**. **Firefighter.** "Firefighter" means a municipal firefighter, as defined in Title 30-A, section 3151, subsection 2, or a volunteer firefighter, as defined in Title 30-A, section 3151, subsection 4.

[ 1997, c. 683, Pt. A, §15 (AMD) .]

**3**. **Education.** "Education" means the process of imparting knowledge or skill through systematic instruction, but not necessarily formal classroom instruction.

[ 2003, c. 570, §1 (NEW); 2003, c. 570, §7 (AFF) .]

**4**. **Training.** "Training" means the process of making a firefighter proficient through instruction and hands-on practice in the operation of equipment, including respiratory protection equipment, that is expected to be used in the performance of the firefighter's assigned duties.

[ 2003, c. 570, §1 (NEW); 2003, c. 570, §7 (AFF) .]

SECTION HISTORY
1987, c. 356, (NEW). 1997, c. 683, §A15 (AMD). 2003, c. 570, §1 (AMD). 2003, c. 570, §7 (AFF).

## §2102. FIREFIGHTER TRAINING AND EDUCATION

**1**. **Training and education requirements.** Each fire department shall provide a training and education program that meets the fire department's needs and includes the following:

A. Training and education in accordance with Title 30-A, section 3154, subsection 2; [2003, c. 570, §2 (AMD); 2003, c. 570, §7 (AFF).]

B. Training and education in the use of protective equipment required by this chapter; [2003, c. 570, §2 (AMD); 2003, c. 570, §7 (AFF).]

C. Training and education by the fire chief or the fire chief's designee in accordance with National Fire Protection Association standards; [2003, c. 570, §2 (AMD); 2003, c. 570, §7 (AFF).]

D. Training and education to prevent occupational accidents, deaths, injuries and illnesses; [2003, c. 570, §2 (AMD); 2003, c. 570, §7 (AFF).]

E. Training and education for all firefighters commensurate with the duties that they are expected to perform prior to performing those duties; [2003, c. 570, §2 (AMD); 2003, c. 570, §7 (AFF).]

F. [2003, c. 570, §7 (AFF); 2003, c. 570, §2 (RP).]

G. [2003, c. 570, §7 (AFF); 2003, c. 570, §2 (RP).]

H. Training and education in the safe handling and use of hazardous substances for firefighters required to handle the substances. Training and education must include the potential hazards involved and the required personal hygiene and protective measures; and [2003, c. 570, §2 (AMD); 2003, c. 570, §7 (AFF).]

I. Training and education in the care, use, inspection, maintenance and limitations of the protective equipment assigned to firefighters for their use. [2003, c. 570, §2 (AMD); 2003, c. 570, §7 (AFF).]

[ 2003, c. 570, §2 (AMD); 2003, c. 570, §7 (AFF) .]

**2**. **Records.** Each fire department shall maintain complete records of individual training and education for firefighters.

[ 2003, c. 570, §2 (AMD); 2003, c. 570, §7 (AFF) .]

SECTION HISTORY
1987, c. 356, (NEW). RR 1997, c. 1, §25 (COR). 2003, c. 570, §2 (AMD). 2003, c. 570, §7 (AFF).

## §2103. STANDARDS FOR EQUIPMENT AND CLOTHING

Unless otherwise specified, any reference in this section to a standard is to the most recent standard in effect. [2003, c. 570, §3 (AMD); 2003, c. 570, §7 (AFF).]

**1**. **Protective equipment.** The fire department shall provide each firefighter with the appropriate equipment to protect the firefighter from the hazards of the work environment to which the firefighter is likely to be exposed. The firefighter shall use the protective equipment whenever exposed to the hazards for which that equipment is provided. If a fire department purchases new protective equipment, that equipment must meet the standard in effect at the time of the purchase. If a fire department acquires protective clothing that is not new, that protective clothing must, at a minimum, meet the standards that were in effect in 1987. Any protective clothing that was purchased or acquired prior to 1987 that does not meet National Fire Protection Association standards must be replaced. Protective equipment must consist of:

A. Protective clothing; [1987, c. 356, (NEW).]

B. [2003, c. 570, §7 (AFF); 2003, c. 570, §3 (RP).]

B-1. Helmet ensemble, including eye and face protection; [2003, c. 570, §1 (NEW); 2003, c. 570, §7 (AFF).]

C. Foot protection; [1987, c. 356, (NEW).]

D. Hand protection; [1987, c. 356, (NEW).]

E. [2003, c. 570, §7 (AFF); 2003, c. 570, §3 (RP).]

F. Hearing protection; and [1987, c. 552, §1 (AMD).]

G. Self-contained breathing apparatus. [1987, c. 552, §1 (AMD).]

H. [1987, c. 552, §2 (RP).]

I. [1987, c. 552, §2 (RP).]

[ 2003, c. 570, §3 (AMD); 2003, c. 570, §7 (AFF) .]

**2**. **Protective equipment; volunteer fire association.**

[ 2003, c. 570, §7 (AFF); 2003, c. 570, §3 (RP) .]

**3**. **Protective clothing.** Protective clothing consists of a coat and trousers. Purchases of new protective clothing by a fire department must meet or exceed the National Fire Protection Association standards.

[ 2003, c. 570, §3 (AMD); 2003, c. 570, §7 (AFF) .]

**4**. **Head protection.**

[ 2003, c. 570, §7 (AFF); 2003, c. 570, §3 (RP) .]

**4-A**. **Helmet ensemble.** Purchases of new helmet ensembles by a fire department must meet or exceed National Fire Protection Association standards.

[ 2003, c. 570, §3 (NEW); 2003, c. 570, §7 (AFF) .]

**5**. **Foot protection.** Purchases of new boots by fire departments must meet or exceed the American National Standards Institute standard Z41.1 and 29 Code of Federal Regulations, Part 1910, General Industry Standards of the Occupational Safety and Health Administration and National Fire Protection Association standards.

[ 2003, c. 570, §3 (AMD); 2003, c. 570, §7 (AFF) .]

**6**. **Hand protection.** Hand protection consists of heat insulating gloves or mittens that are not readily flammable. Purchases of new hand protection by a fire department must meet or exceed National Fire Protection Association standards.

[ 2003, c. 570, §3 (AMD); 2003, c. 570, §7 (AFF) .]

**7**. **Self-contained breathing apparatus.** Purchases of new respiratory apparatus by a department must meet National Fire Protection Association standards and have a minimum of 1/2 hour normal service life plus an additional 1/2 hour capacity in a spare cylinder. The entire unit must meet National Institute for Occupational Safety and Health and National Fire Protection Association standards.

Self-contained breathing apparatus must contain a minimum air supply of 90% of the rated capacity of the cylinder to be considered in-service.

[ 2003, c. 570, §3 (AMD); 2003, c. 570, §7 (AFF) .]

**8**. **Personal alert safety system.** Each firefighter wearing a self-contained breathing apparatus must be provided with and shall use a personal alert safety system device in a hazardous area. The device must meet National Fire Protection Association standards. Purchases of new personal alert safety systems, PASS, by a fire department must meet or exceed the National Fire Protection Association standards.

[ 2003, c. 570, §3 (AMD); 2003, c. 570, §7 (AFF) .]

**9**. **Fire service life safety rope, harness and hardware.** Purchases of new fire service life safety rope, harness and hardware by a fire department must meet National Fire Protection Association standards.

[ 1987, c. 356, (NEW) .]

**10**. **Hearing protection.** Each fire department shall provide and each firefighter shall use hearing protection when the firefighter is operating or riding on fire apparatus and is subject to noise in excess of 90 decibels. Hearing protection must be provided and used when the firefighter is exposed to noise in excess of

90 decibels from power tools or equipment, except in situations when the use of the protective equipment would create an additional hazard to the user. Hearing protection must conform to Occupational Safety and Health Administration standards, 29 Code of Federal Regulations, Section 1910.95.

[ 2003, c. 570, §3 (NEW); 2003, c. 570, §7 (AFF) .]

SECTION HISTORY
1987, c. 356, (NEW). 1987, c. 552, §§1-3 (AMD). 1987, c. 769, §B7 (AMD). 2003, c. 570, §3 (AMD). 2003, c. 570, §7 (AFF).

## §2104. REQUIRED PROVISION AND USE OF PROTECTIVE EQUIPMENT

**1**. **Eye, face protection.** Each fire department shall provide and each firefighter shall use eye or face protection, or both, when the firefighter is engaged in fire suppression and other operations involving hazards to the eyes and face at all times when the face is not protected by the full facepiece of self-contained breathing apparatus.

[ 2003, c. 570, §4 (AMD); 2003, c. 570, §7 (AFF) .]

**2**. **Hearing protection.**

[ 2003, c. 570, §7 (AFF); 2003, c. 570, §5 (RP) .]

**3**. **Self-contained breathing apparatus.** Each fire department shall provide and each firefighter shall use self-contained breathing apparatus when the firefighter enters structural fires or when proximity hazards require that protection. Each fire department shall establish a program of maintenance and repair to ensure that self-contained breathing apparatus retains its original effectiveness as recommended by the manufacturer.

This subsection is effective beginning October 1, 1988.

[ 1987, c. 552, §4 (RPR) .]

**4**. **Personal alert safety system.** Each fire department shall provide a personal alert safety system with every self-contained breathing apparatus.

This subsection is effective beginning October 1, 1988.

[ 1987, c. 552, §5 (RPR) .]

SECTION HISTORY
1987, c. 356, (NEW). 1987, c. 552, §§4,5 (AMD). 2003, c. 570, §§4,5 (AMD). 2003, c. 570, §7 (AFF).

## §2105. INSPECTION PROCEDURE

The Bureau of Labor Standards shall adopt an inspection procedure for self-contained breathing apparatus. The procedure must include at least the following, as specified in the American National Standards Institute Z88.5: [1987, c. 356, (NEW).]

**1**. **All components, air supply devices, personal alert safety system devices and warning devices.** A complete inspection of all components, air supply devices, personal alert safety system devices and warning devices to be performed after each use and:

A. For volunteer associations and on-call fire departments, every month; and [1987, c. 356, (NEW).]

B. For full-time fire departments, every week; [1987, c. 356, (NEW).]

[ 2003, c. 570, §6 (AMD); 2003, c. 570, §7 (AFF) .]

**2**. **Facepiece.** Cleansing and sanitizing the facepiece after each use; and

[ 1987, c. 356, (NEW) .]

**3**. **Record.** A record of the date of each inspection and findings for each self-contained breathing apparatus.

[ 1987, c. 356, (NEW) .]

SECTION HISTORY
1987, c. 356, (NEW). 2003, c. 570, §6 (AMD). 2003, c. 570, §7 (AFF).

## §2106. INSPECTION BY AND ASSISTANCE OF BUREAU OF LABOR STANDARDS

The Bureau of Labor Standards shall inspect fire departments to determine compliance with this chapter. The bureau shall assist fire departments in complying with this chapter. [1995, c. 560, Pt. H, §11 (AMD); 1995, c. 560, Pt. H, §17 (AFF).]

SECTION HISTORY
1987, c. 356, (NEW). 1987, c. 552, §6 (RPR). 1987, c. 769, §A110 (RPR). 1995, c. 560, §H11 (AMD). 1995, c. 560, §H17 (AFF).

## §2106-A. RULES

***(REPEALED)***

SECTION HISTORY
1987, c. 769, §A111 (NEW). 1989, c. 502, §B25 (RP).

## §2107. RULES

The Board of Occupational Safety and Health shall adopt rules to carry out and enforce this chapter. [1993, c. 50, §1 (AMD).]

The Board of Occupational Safety and Health may issue advisory rulings in accordance with Title 5, section 9001 with respect to the applicability of this chapter. [1993, c. 285, §1 (NEW).]

SECTION HISTORY
1987, c. 356, (NEW). 1987, c. 552, §6 (RPR). 1993, c. 50, §1 (AMD). 1993, c. 285, §1 (AMD).

## §2108. INCONSISTENT RULES

Any rules or portions of rules adopted by the Department of Labor that are inconsistent with this chapter are void and unenforceable. [1987, c. 552, §7 (NEW).]

SECTION HISTORY
1987, c. 552, §7 (NEW).

# Chapter 31: HEALTH OCCUPATIONS TRAINING PROJECT

## §2151. SCOPE

***(REPEALED)***

SECTION HISTORY
1987, c. 777, §3 (NEW). 1989, c. 577, §1 (AMD). 1993, c. 410, §T1 (RP). MRSA T. 26, §2158 (RP).

## §2152. ADMINISTRATION

***(REPEALED)***

SECTION HISTORY
1987, c. 777, §3 (NEW). 1993, c. 410, §T1 (RP). MRSA T. 26, §2158 (RP).

## §2153. FUNDING

***(REPEALED)***

SECTION HISTORY
1987, c. 777, §3 (NEW). 1989, c. 577, §1 (AMD). 1993, c. 410, §T1 (RP). MRSA T. 26, §2158 (RP).

## §2154. PROJECT GOALS

***(REPEALED)***

SECTION HISTORY
1987, c. 777, §3 (NEW). 1989, c. 577, §1 (AMD). 1991, c. 528, §E26 (AMD). 1991, c. 528, §§E27,RRR (AFF). 1991, c. 591, §E26 (AMD). 1991, c. 591, §E27 (AFF). 1993, c. 385, §24 (AMD). 1993, c. 410, §T1 (RP). MRSA T. 26, §2158 (RP).

## §2155. TRAINING FOR HEALTH CARE OCCUPATIONS

***(REPEALED)***

SECTION HISTORY
1987, c. 777, §3 (NEW). 1989, c. 443, §80 (AMD). 1989, c. 577, §1 (AMD). 1989, c. 700, §A107 (AMD). 1993, c. 410, §T1 (RP). MRSA T. 26, §2158 (RP).

## §2156. TRAINING FOR ALLIED HEALTH OCCUPATIONS

***(REPEALED)***

SECTION HISTORY
1987, c. 777, §3 (NEW). 1989, c. 577, §2 (RPR). 1993, c. 410, §T1 (RP). MRSA T. 26, §2158 (RP).

## §2157. PAYBACK LOANS FOR REGISTERED NURSES

***(REPEALED)***

SECTION HISTORY
1987, c. 777, §3 (NEW). 1989, c. 577, §2 (RPR). 1991, c. 528, §§E29,RRR (AFF). 1991, c. 528, §E28 (RP). 1991, c. 591, §E29 (AFF). 1991, c. 591, §E28 (RP). MRSA T. 26, §2158 (RP).

## §2158. REPEAL

***(REPEALED)***

SECTION HISTORY
1987, c. 777, §3 (NEW). 1989, c. 579, §6 (AMD). 1993, c. 410, §T1 (RP). MRSA T. 26, §2158 (RP).

# Chapter 31-A: HEALTH OCCUPATIONS TRAINING PROJECT

## §2159. SCOPE

***(REPEALED)***

SECTION HISTORY
1993, c. 410, Pt. T, §2 (NEW). MRSA T. 26, §2159-F (RP).

## §2159-A. RESPONSIBILITY

***(REPEALED)***

SECTION HISTORY
1993, c. 410, Pt. T, §2 (NEW). MRSA T. 26, §2159-F (RP).

## §2159-B. ADMINISTRATION AND FUNDING

***(REPEALED)***

SECTION HISTORY
1993, c. 410, Pt. T, §2 (NEW). MRSA T. 26, §2159-F (RP).

## §2159-C. SELECTION OF GRANT RECIPIENTS

***(REPEALED)***

SECTION HISTORY
1993, c. 410, Pt. T, §2 (NEW). MRSA T. 26, §2159-F (RP).

## §2159-D. PROJECT GOALS

***(REPEALED)***

SECTION HISTORY
1993, c. 410, Pt. T, §2 (NEW). 1995, c. 665, Pt. DD, §6 (AMD). 1995, c. 665, Pt. DD, §12 (AFF). MRSA T. 26, §2159-F (RP).

## §2159-E. ANNUAL REPORT

***(REPEALED)***

SECTION HISTORY
1993, c. 410, Pt. T, §2 (NEW). MRSA T. 26, §2159-F (RP).

## §2159-F. REPEAL

***(REPEALED)***

SECTION HISTORY
1993, c. 410, Pt. T, §2 (NEW). 1995, c. 368, Pt. K, §2 (AMD). MRSA T. 26, §2159-F (RP).

# Chapter 32: JOB TRAINING PROGRAM FOR ACTIVITIES COORDINATORS

## §2161. SCOPE

This chapter establishes the Job Training Program for Activities Coordinators, referred to in this chapter as the "program," to provide assistance to the State's long-term care facilities, as defined in Title 22, chapter 1666-B, facing serious shortages of adequately trained personnel for certain positions. [1993, c. 306, §2 (AMD).]

SECTION HISTORY
1991, c. 405, (NEW). 1993, c. 306, §2 (AMD).

## §2162. ADMINISTRATION; FUNDING

The program must be conducted under the auspices of the education delivery system. [1993, c. 306, §3 (RPR).]

SECTION HISTORY
1991, c. 405, (NEW). 1993, c. 306, §3 (RPR).

## §2163. FUNDING

***(REPEALED)***

SECTION HISTORY
1991, c. 405, (NEW). 1993, c. 306, §4 (RP).

## §2164. TRAINING FOR ACTIVITIES COORDINATORS

Under the program, training for activities coordinators in long-term care facilities must be as follows. [1993, c. 306, §5 (AMD).]

**1**. **Job training services.** Job training services, which are provided under the state job training system, must be coordinated by the Department of Labor and the Department of Health and Human Services job training programs. These services may include, but are not limited to, outreach, recruitment, orientation, selection, preoccupational training, supportive services and needs-based stipends.

[ 1991, c. 405, (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

**2**. **Skill training.** Skill training must be provided by qualified training providers such as the State's community colleges to qualified participants who are either entering the field or are employed health care workers who want to upgrade their skills. Participants may be referred by the state job training system.

[ 1993, c. 306, §5 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

**3**. **Certification.** Participants who complete training under this section with a 180-hour curriculum approved by the Department of Health and Human Services to include both theoretical and practical training receive a statewide certificate granted by the Department of Health and Human Services. This certificate or a certificate issued under subsection 4 is required for employment as an activities coordinator in this State after

December 31, 1993, except that a person employed as an activities coordinator on October 9, 1991 who has completed a training program approved by the Department of Health and Human Services is not required to obtain a certificate under this section.

[ 2013, c. 179, §10 (AMD) .]

**4**. **Reciprocity.** Certification may also be issued to candidates who can document completion of comparable training and experience in accordance with rules adopted by the Commissioner of Health and Human Services after consultation with the activities coordinator board of a state health care association.

[ 2009, c. 628, §2 (AMD) .]

SECTION HISTORY
1991, c. 405, (NEW). 1993, c. 306, §5 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 689, §B6 (REV). 2009, c. 628, §§1, 2 (AMD). 2013, c. 179, §10 (AMD).

# Chapter 33: MAINE WORKFORCE INVESTMENT SYSTEM

## §2171. MAINE JOB TRAINING SYSTEM

***(REPEALED)***

SECTION HISTORY
1989, c. 408, §3 (NEW). 1993, c. 385, §25 (AMD). 1993, c. 410, §§O2,3 (AMD). RR 1995, c. 1, §25 (COR). 1995, c. 665, §§DD7,8 (AMD). 1995, c. 665, §DD12 (AFF). 2003, c. 114, §18 (RP).

## §2171-A. MAINE WORKFORCE INVESTMENT SYSTEM

This chapter applies to actions taken under the Maine Workforce Investment System. For the purposes of this chapter, the "Maine Workforce Investment System" means all state and federal education and training programs administered by the Department of Labor and operated by a network of local boards and service delivery providers, including: [2003, c. 114, §19 (NEW).]

**1**. **Workforce Investment Act.** The state program under the federal Workforce Investment Act of 1998, Public Law 105-220; and

[ 2003, c. 114, §19 (NEW) .]

**2**. **Maine Conservation Corps.** The Maine Conservation Corps under Title 12, chapter 220, subchapter 6-A.

[ 2007, c. 695, Pt. A, §32 (AMD) .]

SECTION HISTORY
2003, c. 114, §19 (NEW). 2007, c. 695, Pt. A, §32 (AMD).

## §2172. ON-THE-JOB TRAINING CONTRACTS; APPRENTICESHIPS

**1**. **Application.** This section applies to all on-the-job training contracts entered into by any agency or organization, public or private, that provides a wage subsidy for a trainee with public funds, including all contracts written under the Maine Workforce Investment System.

[ 2003, c. 114, §20 (AMD) .]

**2**. **Standards for on-the-job training contracts.** All on-the-job training contracts must meet the following requirements of this subsection.

A. The occupation for which the contract is written is one which traditionally requires specific occupational training as a prerequisite. [1989, c. 408, §3 (NEW).]

B. The firm or establishment with which the contract is made is not involved in a strike, lockout or other labor dispute. [1989, c. 408, §3 (NEW).]

C. The trainee working under the contract shall receive the same wages and benefits and be subject to the same working conditions as other employees working an equivalent length of time and performing a substantially equivalent job at the work site. [1989, c. 408, §3 (NEW).]

D. Except when the employer has good cause related to the trainee's work performance, the employer shall, upon completion of the on-the-job training contract, offer the trainee continued employment with at least equivalent wages, benefits and working conditions, as existed under the contract. [1989, c. 408, §3 (NEW).]

E. The employer with whom the contract is made has not, in the past, violated paragraph D. [1989, c. 408, §3 (NEW).]

[ 1989, c. 408, §3 (NEW) .]

**3**. **Nondisplacement; noninfringement; existing collective bargaining agreements.** An on-the-job training contract may be executed only if:

A. No currently employed worker would be displaced by the trainee, including partial displacement such as reduction in the hours of work, wages or employment benefits; [1989, c. 408, §3 (NEW).]

B. The training position would not impair existing contracts for the services or collective bargaining agreements, except when the written concurrence of the labor organization concerned has been obtained; [1989, c. 408, §3 (NEW).]

C. No other individual is on layoff from the same or any substantially equivalent job for which the trainee would be trained; [1989, c. 408, §3 (NEW).]

D. The employer has not terminated the employment of any regular employee or otherwise reduced the work force of the employer with the intention of filling the vacancy so created by contracting to hire the trainee; and [1989, c. 408, §3 (NEW).]

E. The job for which the individual would be trained is not being created in a promotional line that will infringe in any way on the promotional opportunities of currently employed individuals. [1989, c. 408, §3 (NEW).]

[ 1989, c. 408, §3 (NEW) .]

**4**. **Apprenticeable occupations.**

[ 2011, c. 491, §11 (RP) .]

SECTION HISTORY
1989, c. 408, §3 (NEW). 2003, c. 114, §§20,21 (AMD). 2011, c. 491, §11 (AMD).

## §2172-A. APPRENTICESHIPS

**1**. **Notification to training applicants.** The Department of Labor shall explain to each person seeking to enroll in a Maine Workforce Investment System program the general nature of registered apprenticeship programs, that a registered apprenticeship program is one of the job training options available under the Maine Workforce Investment System and ascertain that person's interest in such a program.

[ 2003, c. 114, §22 (AMD) .]

**2**. **Referral.** When an individual's employability development plan has been developed, the Maine Workforce Investment System service provider shall:

A. Determine whether the individual's employment goal includes an apprenticeable occupation as defined in section 3201, subsection 2; and [2011, c. 491, §12 (AMD).]

B. [2011, c. 491, §12 (RP).]

C. [2011, c. 491, §12 (RP).]

D. Provide the trainee with information on educational and training opportunities that may be of assistance for indenturing in the registered apprenticeship program. [2011, c. 491, §12 (AMD).]

[ 2011, c. 491, §12 (AMD) .]

SECTION HISTORY
1993, c. 630, §A1 (NEW). 2003, c. 114, §§22,23 (AMD). 2011, c. 491, §12 (AMD).

## §2173. LABOR EDUCATION

Each person enrolled in a program under the Maine Workforce Investment System must be provided an informational pamphlet on labor law that explains the person's rights and responsibilities and lists the appropriate agency to contact for additional information. The informational pamphlet must be developed and disseminated to all Maine Workforce Investment System service providers . [2003, c. 114, §24 (AMD).]

**1**. **Content of pamphlet.** The pamphlet shall cover such laws as:

A. The National Labor Relations Act, Public Law 1935, No. 198, 49 Stat 449; [1989, c. 408, §3 (NEW).]

B. The Occupational Safety and Health Act of 1970, Public Law 91-596; [1989, c. 408, §3 (NEW).]

C. The Fair Labor Standards Act, Public Law 1938, No. 7118, 52 Stat 1060; [1989, c. 408, §3 (NEW).]

D. The Workers' Compensation Act; [1989, c. 408, §3 (NEW).]

E. Unemployment insurance laws; and [1989, c. 408, §3 (NEW).]

F. State and federal laws relating to employment discrimination, including sexual harassment. [1989, c. 408, §3 (NEW).]

[ 1989, c. 408, §3 (NEW) .]

**2**. **Review with providers.** To enhance the trainees' knowledge of labor law, the Maine Workforce Investment System service providers shall, when offering prevocational services to program participants, review the content of the informational pamphlet with the program participants, unless the participants have already received this review.

[ 2003, c. 114, §25 (AMD) .]

**3**. **Staff training.** The direct service staff of the Maine Workforce Investment System service providers must receive training to expand their knowledge of the labor laws contained in the informational pamphlet.

[ 2003, c. 114, §25 (AMD) .]

SECTION HISTORY
1989, c. 408, §3 (NEW). 2003, c. 114, §§24,25 (AMD).

# Chapter 34: ENVIRONMENTAL IMPROVEMENT PROGRAMS

## Subchapter 1: MAINE CONSERVATION CORPS PROGRAM

### §2181. MAINE CONSERVATION CORPS PROGRAM

***(REPEALED)***

SECTION HISTORY
1993, c. 410, §O4 (NEW). 1999, c. 532, §1 (AMD). 2007, c. 240, Pt. NN, §4 (RP).

### §2182. PARTICIPANTS

***(REPEALED)***

SECTION HISTORY
1993, c. 410, §O4 (NEW). 1999, c. 532, §1 (AMD). 2003, c. 114, §26 (AMD). 2007, c. 240, Pt. NN, §4 (RP).

### §2183. PROJECTS

***(REPEALED)***

SECTION HISTORY
1993, c. 410, §O4 (NEW). 1999, c. 532, §1 (AMD). 2007, c. 240, Pt. NN, §4 (RP).

### §2184. LIMITATIONS

***(REPEALED)***

SECTION HISTORY
1993, c. 410, §O4 (NEW). 1999, c. 532, §1 (AMD). 2007, c. 240, Pt. NN, §4 (RP).

### §2185. ADMINISTRATION

***(REPEALED)***

SECTION HISTORY
1993, c. 410, §O4 (NEW). 1999, c. 532, §1 (AMD). 2007, c. 240, Pt. NN, §4 (RP).

### §2186. CORPS MEMBERS

***(REPEALED)***

SECTION HISTORY
1993, c. 410, §O4 (NEW). 1999, c. 532, §1 (AMD). 2007, c. 240, Pt. NN, §4 (RP).

### §2187. PROHIBITION AGAINST DISPLACEMENT OF OTHER EMPLOYEES OR INVOLVEMENT IN LABOR DISPUTES

***(REPEALED)***

SECTION HISTORY
1993, c. 410, §O4 (NEW). 2007, c. 240, Pt. NN, §4 (RP).

## Subchapter 2: STATE ENVIRONMENTAL RESOURCE VOLUNTEER EFFORT

### §2191. STATE ENVIRONMENTAL RESOURCE VOLUNTEER EFFORT PROGRAM CREATED

***(REPEALED)***

SECTION HISTORY
1993, c. 410, §O4 (NEW). 1999, c. 532, §3 (AMD). 2007, c. 240, Pt. NN, §4 (RP).

### §2192. VOLUNTEER INSURANCE

***(REPEALED)***

SECTION HISTORY
1993, c. 410, §O4 (NEW). 1999, c. 532, §3 (AMD). 2007, c. 240, Pt. NN, §4 (RP).

### §2193. TYPES OF VOLUNTEER OR INTERN SERVICES

***(REPEALED)***

SECTION HISTORY
1993, c. 410, §O4 (NEW). 1999, c. 532, §3 (AMD). 2007, c. 240, Pt. NN, §4 (RP).

### §2194. STIPENDS

***(REPEALED)***

SECTION HISTORY
1993, c. 410, §O4 (NEW). 2007, c. 240, Pt. NN, §4 (RP).

### §2195. MONETARY CONTRIBUTIONS TO THE VOLUNTEER AND INTERN PROGRAM

***(REPEALED)***

SECTION HISTORY
1993, c. 410, §O4 (NEW). 1999, c. 532, §3 (AMD). 2007, c. 240, Pt. NN, §4 (RP).

# Chapter 35: FEDERAL WORKFORCE INVESTMENT ACT OF 1998

## §3101. REPORT REQUIRED

The Department of Labor shall annually, by September 1st, report the following information regarding the federal Workforce Investment Act of 1998, referred to in this section as the "Act," to the joint standing committee of the Legislature having jurisdiction over labor matters: [2001, c. 366, §1 (NEW).]

**1**. **Funds received.** The total amount of funds received by the State for adults and dislocated workers under the Act for the previous federal program year and the distribution of those funds, by service provider;

[ 2001, c. 366, §1 (NEW) .]

**2**. **General program, direct training and support services; expenditures and number of participants.** For each of the following categories, the amount of funds received under the Act and spent for those categories and the number of persons receiving services in each category, by service provider:

A. General program costs, including staff salaries and benefits, rent and utilities and equipment; [2001, c. 366, §1 (NEW).]

B. Direct training, including tuition, training accounts, on-the-job training and customized training. The report must include the number of persons receiving services in each of the following categories:

(1) Training provided at an educational or training institution, by type of training or educational institution;

(2) On-the-job training; and

(3) Customized training; and [2001, c. 366, §1 (NEW).]

C. Support services, including transportation, child care, medical and clothing; [2001, c. 366, §1 (NEW).]

[ 2001, c. 366, §1 (NEW) .]

**3**. **Institutions providing education; performance information.** A list of all institutions and programs eligible to provide education or training for adults and dislocated workers with individual training programs and a copy of performance information made available to prospective trainees for each provider;

[ 2001, c. 366, §1 (NEW) .]

**4**. **Number of persons exiting program.** The number of adults and dislocated workers who have exited core and intensive services and education and training services, by service provider;

[ 2001, c. 366, §1 (NEW) .]

**5**. **Wage rates and benefits.** The range of wage rates and benefits provided, including health insurance separately reported, and the full-time or part-time work status for individuals who received core and intensive services and training and education services under an individual training account, at the time of placement following the completion of training and 3 months and 9 months after the first day of employment, by service provider; and

[ 2001, c. 366, §1 (NEW) .]

**6**. **Number of persons who receive degrees.** The number of adults and dislocated workers who became licensed or certified to perform a particular job or received an academic degree or equivalent as a result of participation under the Act, by service provider.

[ 2001, c. 366, §1 (NEW) .]

SECTION HISTORY
2001, c. 366, §1 (NEW).

# Chapter 37: REGISTERED APPRENTICESHIP

## §3201. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2011, c. 491, §13 (NEW).]

**1**. **Apprentice.** "Apprentice" means a person who is at least 16 years of age, except when a higher minimum age standard of 18 years of age is otherwise fixed by law or a sponsor, who is employed to learn an apprenticeable occupation that is approved by the department and who is registered with the Maine Apprenticeship Program.

[ 2011, c. 491, §13 (NEW) .]

**2**. **Apprenticeable occupation.** "Apprenticeable occupation" means an occupation that is specified by industry and that:

A. Involves skills that are customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning; [2011, c. 491, §13 (NEW).]

B. Is clearly identified and commonly recognized throughout an industry; [2011, c. 491, §13 (NEW).]

C. Involves manual, mechanical or technical skills and knowledge that, in accordance with the industry standard for the occupation, require the completion of at least 2,000 hours of on-the-job learning to attain; and [2011, c. 491, §13 (NEW).]

D. Requires related instruction. [2011, c. 491, §13 (NEW).]

[ 2011, c. 491, §13 (NEW) .]

**3**. **Apprenticeship agreement.** "Apprenticeship agreement" means a written agreement between an apprentice and a sponsor or employer that contains the terms and conditions of the employment and training of the apprentice.

[ 2011, c. 491, §13 (NEW) .]

**4**. **Apprenticeship committee.** "Apprenticeship committee" means those persons designated by a sponsor to administer an apprenticeship program. An apprenticeship committee may be either a joint committee or a nonjoint committee, as follows.

A. A joint committee is composed of an equal number of representatives of the employer and representatives of the employees who are represented by a bona fide collective bargaining agent. [2011, c. 491, §13 (NEW).]

B. A nonjoint committee is composed of employer representatives and may include employees but does not have a bona fide collective bargaining agent as a participant. [2011, c. 491, §13 (NEW).]

[ 2011, c. 491, §13 (NEW) .]

**5**. **Apprenticeship program.** "Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as the requirement for an apprenticeship agreement, a schedule of work experience outlining the

skills to be learned on the job, a schedule of related instruction courses necessary to supplement the on-the-job learning and a schedule of progressively increasing wages to be paid to an apprentice consistent with the skill proficiencies achieved and leading toward a journeyman wage rate.

[ 2011, c. 491, §13 (NEW) .]

**6**. **Competency.** "Competency" means the attainment of manual, mechanical or technical skills and knowledge, as specified by an occupational standard and demonstrated by an appropriate written and hands-on proficiency measurement.

[ 2011, c. 491, §13 (NEW) .]

**7**. **Completion rate.** "Completion rate" means the percentage of an apprenticeship cohort that receives a certificate of completion of apprenticeship within one year of the projected completion date. As used in this subsection, "apprenticeship cohort" means the group of apprentices registered to a specific apprenticeship program during a one-year time frame, except that "apprenticeship cohort" does not include the apprentices whose apprenticeship agreement has been cancelled during the probationary period as described in section 3205, subsection 8.

[ 2011, c. 491, §13 (NEW) .]

**8**. **Department.** "Department" means the Department of Labor.

[ 2011, c. 491, §13 (NEW) .]

**9**. **Electronic media.** "Electronic media" means media that use electronics or electromechanical energy for the end user to access content and includes, but is not limited to, electronic storage media, transmission media, the Internet, extranet, lease lines, dial-up lines, private networks and the physical movement of removable or transportable electronic media and interactive distance learning.

[ 2011, c. 491, §13 (NEW) .]

**10**. **Employer.** "Employer" means a person or organization employing an apprentice, whether or not the person or organization is a party to an apprenticeship agreement with the apprentice.

[ 2011, c. 491, §13 (NEW) .]

**11**. **Federal purposes.** "Federal purposes" includes any federal contract, grant, agreement or arrangement dealing with apprenticeship and any federal financial or other assistance, benefit, privilege, contribution, allowance, exemption, preference or right pertaining to apprenticeship.

[ 2011, c. 491, §13 (NEW) .]

**12**. **Interim credential.** "Interim credential" means a credential issued by the department to document attainment of certain benchmarks toward completion of an apprenticeship.

[ 2011, c. 491, §13 (NEW) .]

**13**. **Journeyman.** "Journeyman" means a worker who has attained a level of skills, abilities and competencies recognized within an industry as the skills, abilities and competencies required for an occupation. "Journeyman" includes a mentor, technician, specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training, as determined by the sponsor.

[ 2011, c. 491, §13 (NEW) .]

**14**. **Maine Apprenticeship Council.** "Maine Apprenticeship Council" means the Maine Apprenticeship Council under section 3209.

[ 2011, c. 491, §13 (NEW) .]

**15**. **Maine Apprenticeship Program.** "Maine Apprenticeship Program" means the Maine Apprenticeship Program established in section 3202.

[ 2011, c. 491, §13 (NEW) .]

**16**. **Provisional registration.** "Provisional registration" means the one-year initial provisional registration of newly registered apprenticeship programs under section 3202, subsection 5.

[ 2011, c. 491, §13 (NEW) .]

**17**. **Quality assurance assessment.** "Quality assurance assessment" means a comprehensive review conducted by the department regarding all aspects of an apprenticeship program's performance, including but not limited to determining if apprentices are receiving on-the-job learning in all phases of the apprenticeable occupation, scheduled wage increases consistent with the standards of the program submitted under section 3203 and related instruction through appropriate curricula and delivery systems and determining if the apprenticeship program has provided to the registration agency notification of all new registrations, transfers, suspensions, cancellations and completions as required in this chapter.

[ 2011, c. 491, §13 (NEW) .]

**18**. **Registration.** "Registration" means registration with the Maine Apprenticeship Program under section 3202.

[ 2011, c. 491, §13 (NEW) .]

**19**. **Registration agency.** "Registration agency" means the state apprenticeship agency, which is responsible for registering apprenticeship programs and apprentices, providing technical assistance and conducting compliance and quality assurance assessments.

[ 2011, c. 491, §13 (NEW) .]

**20**. **Related instruction.** "Related instruction" means an organized and systematic form of instruction designed to provide an apprentice with the knowledge of the theoretical and technical subjects related to the apprentice's occupation and given in a classroom, through occupational or industrial courses or by correspondence courses of equivalent value, electronic media or other forms of self-study approved by the department.

[ 2011, c. 491, §13 (NEW) .]

**21**. **Sponsor.** "Sponsor" means a person, association, apprenticeship committee or organization operating an apprenticeship program and in whose name the apprenticeship program is or is to be registered or approved.

[ 2011, c. 491, §13 (NEW) .]

**22**. **State apprenticeship agency.** "State apprenticeship agency" means the department, which is the state government agency that has responsibility and accountability for apprenticeship in the State and is recognized by the United States Department of Labor, Office of Apprenticeship as an agency that has been properly constituted under state law and authorized by the Office of Apprenticeship to register and oversee apprenticeship programs and apprenticeship agreements for federal purposes.

[ 2011, c. 491, §13 (NEW) .]

**23**. **Technical assistance.** "Technical assistance" means guidance provided by the Bureau of Employment Services within the department in the development, revision, amendment or processing of a potential or current sponsor's standards of apprenticeship or apprenticeship agreements or advice or consultation provided by the bureau to a sponsor to further compliance with or remedy nonconformance to state and federal law, regulation or rule.

[ 2011, c. 491, §13 (NEW) .]

**24**. **Transfer.** "Transfer" means a shift of registration from one apprenticeship program to another or from one employer within a program to another employer within that same program, in accordance with an agreement between the apprentice and the affected sponsors.

[ 2011, c. 491, §13 (NEW) .]

SECTION HISTORY
2011, c. 491, §13 (NEW).

## §3202. MAINE APPRENTICESHIP PROGRAM; ELIGIBILITY AND REGISTRATION PROCEDURE

The Maine Apprenticeship Program is established for the purposes of registration and oversight of apprenticeship programs in the State. The Maine Apprenticeship Program is administered by the department, which is the state apprenticeship agency and registration agency for the purposes of 29 Code of Federal Regulations, Parts 29 and 30. [2011, c. 491, §13 (NEW).]

**1**. **Registration; eligibility.** A sponsor may apply with the Maine Apprenticeship Program for review and approval of an apprenticeship program or apprenticeship agreement. To be eligible for registration, the apprenticeship program or apprenticeship agreement must meet the requirements of this chapter, must involve training in an apprenticeable occupation and must comply with state and federal law regarding equal employment opportunity in apprenticeship and training. An apprenticeship program is registered upon its acceptance and recording by the Maine Apprenticeship Program as meeting the basic standards and requirements for approval of such a program for federal purposes, as evidenced by a certificate of registration or other written indicia. An apprenticeship agreement is registered upon its acceptance and recording by the Maine Apprenticeship Program as evidence of an apprentice's participation in a particular registered apprenticeship program.

[ 2011, c. 491, §13 (NEW) .]

**2**. **Apprentices registered.** Except as provided under subsection 3, apprentices must be individually registered under a registered sponsor and in a registered apprenticeship program. Such individual registration may be effected by filing copies of each individual apprenticeship agreement with the Maine Apprenticeship Program.

[ 2011, c. 491, §13 (NEW) .]

**3**. **Probationary employment.** A sponsor shall submit the name of a person in a period of probationary employment under section 3203, subsection 1, paragraph H as an apprentice under a registered apprenticeship program within 45 days of employment to the Maine Apprenticeship Program for certification and to establish the apprentice in probationary status.

[ 2011, c. 491, §13 (NEW) .]

**4**. **Certificate.** If the Maine Apprenticeship Program approves an apprenticeship program, it shall register that apprenticeship program and issue a sponsor approval certificate.

[ 2011, c. 491, §13 (NEW) .]

**5**. **Review.** The Maine Apprenticeship Program shall review an application for registration of an apprenticeship program. An apprenticeship program that meets the standards for registration must be given provisional registration for a period of one year. The Maine Apprenticeship Program shall review an apprenticeship program for quality and conformity with the requirements of this chapter at the end of the first year after registration. A program that conforms to the requirements may have its registration be made permanent or may continue to be provisionally registered through the first full training cycle. An apprenticeship program that is not in operation or does not conform to the requirements must be deregistered pursuant to section 3206.

The Maine Apprenticeship Program shall review a provisionally registered apprenticeship program for quality and conformity with the requirements of this chapter at the end of the first full training cycle. If the provisionally registered apprenticeship program receives a satisfactory review, the Maine Apprenticeship Program shall convert the provisional registration to permanent registration. Subsequent reviews must be conducted no less frequently than every 5 years. An apprenticeship program that is not in operation or does not conform to the requirements must be deregistered pursuant to section 3206.

[ 2011, c. 491, §13 (NEW) .]

**6**. **Change of program.** A sponsor may not make a change to a registered apprenticeship program unless the change is approved by the Maine Apprenticeship Program. To make a change to a registered apprenticeship program, a sponsor must submit a request to the Maine Apprenticeship Program. The Maine Apprenticeship Program shall approve or disapprove the requested change within 90 days from receipt of the request. If approved, the change must be recorded and acknowledged by the Maine Apprenticeship Program within 90 days of approval. If not approved, the Maine Apprenticeship Program shall notify the sponsor of the disapproval and the reason for the disapproval and provide the appropriate technical assistance.

[ 2011, c. 491, §13 (NEW) .]

**7**. **Union participation.** An apprenticeship program may be proposed for registration by an employer or group of employers or an employers association. An employer or employers association with respect to which there exists a standard or a collective bargaining agreement or other instrument that provides for participation by a union in any aspect of the operation of the substantive matters of an apprenticeship program must, if such participation is exercised, include in the apprenticeship program proposed for registration written acknowledgment of union agreement or no objection to the registration. If such participation is not so provided for or practiced, the employer or employers association must simultaneously furnish to an existing union, if any, that is the collective bargaining agent of the employees to be trained a copy of its application for registration and of the apprenticeship program. The registration agency shall provide for receipt of union comments within 45 days before final action on the application for registration.

[ 2011, c. 2, §32 (COR) .]

SECTION HISTORY
RR 2011, c. 2, §32 (COR). 2011, c. 491, §13 (NEW).

## §3203. STANDARDS OF APPRENTICESHIP

An apprenticeship program must conform to the following standards to be eligible for approval and registration by the Maine Apprenticeship Program. [2011, c. 491, §13 (NEW).]

**1**. **Standards.** An apprenticeship program must have organized, written standards containing the terms and conditions of employment, training and supervision of one or more apprentices in an apprenticeable occupation and subscribed to by a sponsor who has undertaken to carry out the program. The standards must contain:

A. A description of the employment and training of the apprentice in a skilled occupation; [2011, c. 491, §13 (NEW).]

B. A description of how successful apprenticeship will be measured, which for an individual apprentice may be a time-based approach, a competency-based approach or a hybrid approach. An apprenticeship program must require a minimum of 2,000 hours of on-the-job learning.

(1) The time-based approach measures skill acquisition through the individual apprentice's completion of 2,000 to 10,000 hours of on-the-job learning as described in a work process schedule.

(2) The competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, as demonstrated by an appropriate written and hands-on proficiency measurement. An apprenticeship program using the competency-based approach must still require apprentices to complete an on-the-job learning component of registered apprenticeship. The apprenticeship program's standards must address how on-the-job learning will be integrated into the apprenticeship program, describe competencies and identify an appropriate means of testing and evaluation for such competencies.

(3) The hybrid approach measures the individual apprentice's skill acquisition through a combination of a specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule.

The determination of the appropriate approach for the apprenticeship program's standards is made by the sponsor, subject to approval by the Maine Apprenticeship Program of the determination as appropriate to the apprenticeable occupation for which the apprenticeship program is registered; [2011, c. 491, §13 (NEW).]

C. An outline of the work processes in which the apprentice will receive supervised work experience and training on the job and the allocation of the approximate amount of time to be spent in each major process; [2011, c. 491, §13 (NEW).]

D. Provision for at least 144 hours of related instruction for each year of apprenticeship. An apprenticeship instructor must:

(1) Meet the Department of Education's requirements for a career and technical education instructor or be a subject matter expert, such as a journeyman, who is recognized within an industry as having expertise in a specific occupation; and

(2) Have training in teaching techniques and adult learning styles. This training may occur before or after the apprenticeship instructor has started to provide the related instruction; [2011, c. 491, §13 (NEW).]

E. A schedule of progressively increasing wages to be paid to an apprentice consistent with the skill acquired. The entry wage may not be less than the minimum wage prescribed by the federal Fair Labor Standards Act of 1938 for student preapprentices and not less than $10 per hour or 50% of the journeyman rate, whichever is highest, for adult registered apprentices, unless a higher wage is required by other applicable federal law or regulation or state law or rule or by collective bargaining agreement. For purposes of this paragraph, "journeyman rate" is the rate of pay established by the sponsor for an apprentice who has met all of the skill, knowledge and competency requirements for that occupation; [2011, c. 491, §13 (NEW).]

F. Provision for periodic review and evaluation of the apprentice's performance on the job and in related instruction and for the maintenance of appropriate progress records; [2011, c. 491, §13 (NEW).]

G. Provision for a numeric ratio of apprentices to journeymen consistent with proper supervision, training, safety and continuity of employment and with applicable provisions in collective bargaining agreements, except when a minimum ratio is expressly provided for by the collective bargaining agreements. The ratio language must be specific and clear as to its application to the job site, workforce, department or plant; [2011, c. 491, §13 (NEW).]

H. Provision for a probationary period reasonable in relation to the full apprenticeship term, with full credit given for such a period toward completion of apprenticeship. The probationary period may not exceed 25% of the length of the apprenticeship program or one year, whichever is shorter; [2011, c. 491, §13 (NEW).]

I. Provision for adequate and safe equipment and facilities for training and supervision, safety training for apprentices on the job and in related instruction and qualified training personnel and adequate supervision on the job; [2011, c. 491, §13 (NEW).]

J. The minimum qualifications required by the sponsor for persons entering the apprenticeship program, with an eligible starting age of not less than 16 years of age, or 18 years of age if required by federal occupational safety and health laws or regulations; [2011, c. 491, §13 (NEW).]

K. Provision for the placement of an apprentice under an apprenticeship agreement that meets the requirements of this chapter and 29 Code of Federal Regulations, Section 29.7 and is approved by the Maine Apprenticeship Program and directly or by reference incorporates the standards of the apprenticeship program as part of the agreement; [2011, c. 491, §13 (NEW).]

L. Provision for the granting of advanced standing or credit for demonstrated competency, acquired experience, training or skills, which must be applied to all applicants equally, with commensurate wages for standing or credit so granted; [2011, c. 491, §13 (NEW).]

M. Provision for transfer of an apprentice between apprenticeship programs and within an apprenticeship program in accordance with section 3204, subsection 3; [2011, c. 491, §13 (NEW).]

N. Provision for recognition for successful completion of apprenticeship evidenced by an appropriate certificate issued by the Maine Apprenticeship Program; [2011, c. 491, §13 (NEW).]

O. With respect to an apprenticeship program that uses the competency-based or hybrid approach under paragraph B and that includes the issuance of interim credentials, program standards that clearly identify the interim credentials, demonstrate how the credentials link to the components of the apprenticeable occupation and establish the process for assessing an individual apprentice's demonstration of competency associated with the particular interim credential. Interim credentials may be issued only for recognized components of an apprenticeable occupation; [2011, c. 491, §13 (NEW).]

P. Provision for the registration and deregistration of the apprenticeship program and for the prompt submission of any program standard modification or amendment to the Maine Apprenticeship Program for approval; [2011, c. 491, §13 (NEW).]

Q. Provision for registration of and amendments to apprenticeship agreements and for notice to the Maine Apprenticeship Program in accordance with section 3204, subsection 4; [2011, c. 491, §13 (NEW).]

R. Provision for authority for the cancellation of an apprenticeship agreement during the probationary period under section 3205, subsection 8 by either party without stated cause; [2011, c. 491, §13 (NEW).]

S. Provision for compliance with the equal employment opportunity requirements of this chapter and be in accordance with all aspects of 29 Code of Federal Regulations, Section 30; [2011, c. 491, §13 (NEW).]

T. The name, address, telephone number and e-mail address, if appropriate, for the appropriate individual with authority under the apprenticeship program to receive, process and make disposition of complaints; and [2011, c. 491, §13 (NEW).]

U. Provision for recording and maintenance of all records concerning apprenticeship as may be required by the Maine Apprenticeship Program and other applicable law. [2011, c. 491, §13 (NEW).]

[ 2011, c. 491, §13 (NEW) .]

SECTION HISTORY
2011, c. 491, §13 (NEW).

## §3204. APPRENTICESHIP PROGRAM PERFORMANCE STANDARDS

**1**. **Minimum number of apprentices.** A registered apprenticeship program must have at least one registered apprentice, except for the following specified periods of time if the periods do not exceed one year:

A. Between the date when the apprenticeship program is registered and the date of registration for its first apprentice; and [2011, c. 491, §13 (NEW).]

B. Between the date that the apprenticeship program graduates an apprentice and the date of registration for the next apprentice in the program. [2011, c. 491, §13 (NEW).]

[ 2011, c. 491, §13 (NEW) .]

**2**. **Evaluation.** The Maine Apprenticeship Program shall evaluate the performance of a registered apprenticeship program. The tools and factors to be used must include, but are not limited to:

A. Quality assurance assessments; [2011, c. 491, §13 (NEW).]

B. Equal employment opportunity compliance reviews; and [2011, c. 491, §13 (NEW).]

C. Completion rates. The cancellation of an apprenticeship agreement during the probationary period under section 3205, subsection 8 does not have an adverse impact on an apprenticeship program's completion rate. [2011, c. 491, §13 (NEW).]

[ 2011, c. 491, §13 (NEW) .]

**3**. **Transfers.** A transfer of an apprentice between apprenticeship programs or within an apprenticeship program must be based on agreement between the apprentice and the affected sponsors and:

A. The sponsor must provide the transferring apprentice with a transcript of related instruction and on-the-job learning; [2011, c. 491, §13 (NEW).]

B. The transfer may be only to an apprenticeship program for the same occupation as the one from which the apprentice is being transferred; and [2011, c. 491, §13 (NEW).]

C. If the transfer occurs between sponsors, a new apprenticeship agreement must be executed. [2011, c. 491, §13 (NEW).]

[ 2011, c. 491, §13 (NEW) .]

**4**. **Notice.** A sponsor shall notify the Maine Apprenticeship Program of a person who has completed an apprenticeship program, of a transfer under subsection 3 or of a suspension or cancellation of an apprenticeship agreement under section 3205 within 45 days of the completion, transfer, suspension or cancellation. Notice of a transfer, suspension or cancellation must include the reasons for the transfer, suspension or cancellation.

[ 2011, c. 491, §13 (NEW) .]

SECTION HISTORY
2011, c. 491, §13 (NEW).

## §3205. APPRENTICESHIP AGREEMENT

An apprenticeship agreement must contain, explicitly or by reference: [2011, c. 491, §13 (NEW).]

**1**. **Names.** The names and signatures of the contracting parties, including the apprentice and the sponsor or employer, and the name and signature of a parent or guardian of the apprentice if the apprentice is a minor;

[ 2011, c. 491, §13 (NEW) .]

**2**. **Apprentice.** The gender, race and ethnicity of the apprentice in such detail as required to conform to the federal Equal Employment Opportunity Act, 42 United States Code, Chapter 21, subchapter VI and for affirmative action compliance in apprenticeship programs, including records of the following races and ethnic groups: African-American or black; Native American, including Alaskan Native; Asian, including Pacific Islander; Hispanic, including persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish origin or culture regardless of race; and white other than Hispanic, as well as the date of birth, contact information and, on a voluntary basis, the social security number of the apprentice;

[ 2011, c. 491, §13 (NEW) .]

**3**. **Contact information.** Contact information of the sponsor and registration agency;

[ 2011, c. 491, §13 (NEW) .]

**4**. **Occupation; term.** A statement of the occupation in which the apprentice is to be trained and the beginning date and term of apprenticeship;

[ 2011, c. 491, §13 (NEW) .]

**5**. **Hours.** A statement setting forth:

A. For an apprenticeship program using the time-based approach under section 3203, subsection 1, paragraph B, the number of hours to be spent by the apprentice in on-the-job learning; for an apprenticeship program using the competency-based approach under section 3203, subsection 1, paragraph B, a description of the skill sets to be attained to complete the program, including the on-the-job learning component; and, for an apprenticeship program using the hybrid approach under section 3203, subsection 1, paragraph B, the minimum number of hours to be spent by the apprentice in on-the-job learning and a description of the skill sets to be attained to complete the program; and [2011, c. 491, §13 (NEW).]

B. The number of hours, which must be at least 144 hours per year, to be spent by the apprentice in related instruction; [2011, c. 491, §13 (NEW).]

[ 2011, c. 491, §13 (NEW) .]

**6**. **Schedule.** A statement setting forth a schedule of the work processes in the occupation or industry divisions in which the apprentice is to be trained and the approximate time to be spent at each process;

[ 2011, c. 491, §13 (NEW) .]

**7**. **Wages.** A statement of the graduated scale of wages to be paid to the apprentice and whether or not the required related instruction is compensated;

[ 2011, c. 491, §13 (NEW) .]

**8**. **Probationary period.** Statements providing:

A. For a specific period of probation during which the apprenticeship agreement may be cancelled by either party to the agreement upon written notice to the registration agency, without adverse impact on the sponsor; and [2011, c. 491, §13 (NEW).]

B. That, after the probationary period in paragraph A, the apprenticeship agreement may be:

(1) Cancelled at the request of the apprentice; or

(2) Suspended or cancelled by the sponsor, for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action and with written notice to the apprentice and to the department of the final action taken; [2011, c. 491, §13 (NEW).]

[ 2011, c. 491, §13 (NEW) .]

**9**. **Standards.** A reference incorporating as part of the agreement the standards of the apprenticeship program as they exist on the date of the agreement and as they may be amended during the period of the agreement;

[ 2011, c. 491, §13 (NEW) .]

**10**. **Equal opportunity.** A statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin or gender; and

[ 2011, c. 491, §13 (NEW) .]

**11**. **Dispute resolution authority.** The name, address, telephone number and e-mail address, if appropriate, of the appropriate authority designated under the apprenticeship program to receive, process and make disposition of controversies or differences arising out of the apprenticeship agreement when the controversies or differences cannot be adjusted between the sponsor and apprentice or resolved in accordance with established procedure or applicable collective bargaining provisions.

[ 2011, c. 491, §13 (NEW) .]

SECTION HISTORY
2011, c. 491, §13 (NEW).

## §3206. DEREGISTRATION OF A REGISTERED APPRENTICESHIP PROGRAM

As set out in this section, deregistration of an apprenticeship program may be effected upon the voluntary action of the sponsor or by the Maine Apprenticeship Program upon reasonable cause. [2011, c. 491, §13 (NEW).]

**1**. **Deregistration at the request of the sponsor.** Upon receipt of a request for deregistration from a sponsor, the Maine Apprenticeship Program may deregister an apprenticeship program by written acknowledgment of the request stating:

A. That the apprenticeship program is deregistered at the sponsor's request and the effective date of the deregistration; and [2011, c. 491, §13 (NEW).]

B. That, within 15 days of the date of the acknowledgment, the sponsor must notify all apprentices of the deregistration and the effective date; that the deregistration automatically deprives the apprentices of individual registration; that the deregistration removes the apprentices from coverage for federal purposes; and that all apprentices are referred to the Maine Apprenticeship Program for information about potential transfer to other registered apprenticeship programs. [2011, c. 491, §13 (NEW).]

[ 2011, c. 491, §13 (NEW) .]

**2**. **Deregistration by the Maine Apprenticeship Program upon reasonable cause.** The Maine Apprenticeship Program may undertake deregistration proceedings with respect to an apprenticeship program if the apprenticeship program is not conducted, operated or administered in accordance with the apprenticeship program's standards under section 3203 or with the requirements of this chapter, including but not limited to failure to provide on-the-job learning; failure to pay an apprentice a progressively increasing wage consistent with skills acquired; and persistent and significant failure to perform successfully. For purposes of this subsection, persistent and significant failure to perform successfully occurs when a sponsor consistently fails to register at least one apprentice, shows a pattern of poor quality assurance assessment results over a period of several years, demonstrates an ongoing pattern of very low completion rates over a period of several years or shows no indication of improvement in the areas identified by the Maine Apprenticeship Program during a review process as requiring corrective action. The Maine Apprenticeship Program shall follow procedures regarding agency-initiated deregistration as outlined in 29 Code of Federal Regulations, Section 29.8.

[ 2011, c. 2, §33 (COR) .]

**3**. **Consequences of deregistration.** An apprentice who is enrolled in an apprenticeship program that is deregistered pursuant to subsection 1 or 2 is denied individual registration under the Maine Apprenticeship Program and is removed from coverage for federal purposes.

[ 2011, c. 491, §13 (NEW) .]

SECTION HISTORY
RR 2011, c. 2, §33 (COR). 2011, c. 491, §13 (NEW).

## §3207. LIMITATIONS

**1**. **Invalidate.** Nothing in this chapter or in an apprenticeship agreement may be construed to invalidate:

A. An apprenticeship provision in a collective bargaining agreement between employers and employees establishing more stringent apprenticeship standards; or [2011, c. 491, §13 (NEW).]

B. A special provision for veterans, minorities or women in the standards, apprentice qualifications or operation of an apprenticeship program or in the apprenticeship agreement that is not otherwise prohibited by law, executive order or authorized regulation or rule. [2011, c. 491, §13 (NEW).]

[ 2011, c. 491, §13 (NEW) .]

SECTION HISTORY

2011, c. 491, §13 (NEW).

## §3208. COMPLAINTS

**1**. **Review.** A controversy or difference arising under an apprenticeship agreement that cannot be resolved between the sponsor and the apprentice and that is not covered by a collective bargaining agreement may be submitted by an apprentice, or the apprentice's authorized representative, to the Maine Apprenticeship Program for review. Matters covered by a collective bargaining agreement are not subject to such review.

[ 2011, c. 491, §13 (NEW) .]

**2**. **Complaint procedure.** A complaint submitted under subsection 1 by an apprentice or the apprentice's authorized representative to the Maine Apprenticeship Program must be in writing and signed by the complainant or authorized representative and must be submitted within 60 days of the final decision of the sponsor. The complaint must set forth the specific matter giving rise to the complaint, together with relevant facts and circumstances. Copies of pertinent documents and correspondence must accompany the complaint.

[ 2011, c. 491, §13 (NEW) .]

**3**. **Decision; resolution.** The Maine Apprenticeship Program, as appropriate, shall render an opinion on a complaint under this section within 90 days after receipt of the complaint, based upon such investigation of the matters submitted as the Maine Apprenticeship Program finds necessary and the record before it. During the 90-day period, the Maine Apprenticeship Program shall make reasonable efforts to effect a satisfactory resolution between the parties involved. If the complaint is so resolved, the Maine Apprenticeship Program shall notify the parties that the case is closed. If an opinion is rendered, the Maine Apprenticeship Program shall send copies of the opinion to all interested parties. The decision of the Maine Apprenticeship Program constitutes final agency action and is subject to court review except as otherwise provided in this section.

[ 2011, c. 491, §13 (NEW) .]

**4**. **Other remedies.** This section does not preclude an apprentice from pursuing any other remedy authorized under another federal, state or local law.

[ 2011, c. 491, §13 (NEW) .]

**5**. **Application.** This section does not apply to a complaint concerning discrimination or other equal opportunity matters. All such complaints must be submitted, processed and resolved in accordance with applicable state or federal law.

[ 2011, c. 491, §13 (NEW) .]

SECTION HISTORY
2011, c. 491, §13 (NEW).

## §3209. MAINE APPRENTICESHIP COUNCIL

**1**. **Establishment.** The Maine Apprenticeship Council, as established in Title 5, section 12004-I, subsection 54-D and referred to in this section as "the council," consists of 16 members appointed in accordance with this subsection. Members of the council must be familiar with apprenticeable occupations.

A. Twelve members of the council are appointed by the Governor as follows:

(1) Four members must be representatives of employees and be bona fide members of a recognized major labor organization;

(2) Four members must be representatives of employers and be bona fide employers or authorized representatives of employers; and

(3) Four members must be representatives of the public and may not be industrial employers or employees or be directly concerned with any particular industrial employer or employee. At least 2 of these members must represent the interests of women and minorities and recipients of benefits under the Temporary Assistance for Needy Families program under Title 22, chapter 1053-B who are in registered apprenticeship. [2011, c. 491, §13 (NEW).]

B. Four nonvoting members of the council are appointed by their respective agencies as follows:

(1) One representative of the Maine Jobs Council established in section 2006, appointed by the chair of the Maine Jobs Council;

(2) One representative of the Maine Community College System, appointed by the President of the Maine Community College System;

(3) One representative of the Department of Education, appointed by the Commissioner of Education; and

(4) One representative of the Department of Economic and Community Development, appointed by the Commissioner of Economic and Community Development. [2011, c. 491, §13 (NEW).]

[ 2011, c. 491, §13 (NEW) .]

**2**. **Term; vacancy.** A member of the council serves a 4-year term. A member serves until the member's successor is appointed and qualified. A vacancy on the council must be filled for the remainder of the unexpired term in the same manner as the original appointment.

[ 2011, c. 491, §13 (NEW) .]

**3**. **Chair.** The council shall appoint one of its members as chair of the council.

[ 2011, c. 491, §13 (NEW) .]

**4**. **Duties.** The council shall meet on a quarterly basis and shall assist and advise the department in its duties administering the Maine Apprenticeship Program with respect to:

A. Developing, approving and registering new apprenticeship programs; [2011, c. 491, §13 (NEW).]

B. Identifying and registering new sponsors; [2011, c. 491, §13 (NEW).]

C. Representing the Maine Apprenticeship Program to the Maine Jobs Council established in section 2006; [2011, c. 491, §13 (NEW).]

D. Reviewing and recommending additions or changes to Maine Apprenticeship Program rules, policies and processes; [2011, c. 491, §13 (NEW).]

E. Ensuring availability of related instruction for apprentices; [2011, c. 491, §13 (NEW).]

F. Ensuring registered apprenticeship programs meet the requirements of this chapter; [2011, c. 491, §13 (NEW).]

G. Ensuring appropriate records of registered apprenticeship programs, registered apprentices and sponsors are created and maintained; [2011, c. 491, §13 (NEW).]

H. Reviewing complaints; [2011, c. 491, §13 (NEW).]

I. Developing a biennial plan and evaluation tools and processes to be used to review apprenticeship program outcomes; and [2011, c. 491, §13 (NEW).]

J. Ensuring an annual report is provided by March 1st of each year to the Governor, the joint standing committee of the Legislature having jurisdiction over labor and economic development matters and the joint standing committee of the Legislature having jurisdiction over education and cultural affairs that includes the following:

(1) The name and location of each sponsor;

(2) The number of apprentices registered into and completing apprenticeship; and

(3) The return on investment. [2011, c. 491, §13 (NEW).]

[ 2011, c. 491, §13 (NEW) .]

SECTION HISTORY
2011, c. 491, §13 (NEW).

## §3210. STATE OFFICE

The department shall administer the Maine Apprenticeship Program through the Bureau of Employment Services within the department, referred to in this section as "the bureau." The bureau is the state office for the purposes of 29 Code of Federal Regulations, Parts 29 and 30. [2011, c. 491, §13 (NEW).]

**1**. **Director.** The bureau shall employ a director of apprenticeship, who supervises the execution of apprenticeship agreements and the maintenance of standards.

[ 2011, c. 491, §13 (NEW) .]

**2**. **Records; instruction.** The bureau shall keep a record of apprenticeship agreements and apprenticeship programs and ensure that all aspects of related instruction are delivered and coordinated in a timely manner.

[ 2011, c. 491, §13 (NEW) .]

SECTION HISTORY
2011, c. 491, §13 (NEW).

## §3211. ADDITIONAL POWERS AND DUTIES

**1**. **Investment system.** The Maine Apprenticeship Program shall partner with the Maine Workforce Investment System under chapter 33 to use registered apprenticeship as a key talent development approach that serves both workforce investment system participants and industry in the State.

[ 2011, c. 491, §13 (NEW) .]

**2**. **Economic development.** The Maine Apprenticeship Program shall cooperate with the Department of Economic and Community Development in matters relating to workforce and economic development.

[ 2011, c. 491, §13 (NEW) .]

**3**. **Outreach.** The Maine Apprenticeship Program shall cooperate, consult and coordinate with workforce development entities that serve individuals seeking employment.

[ 2011, c. 491, §13 (NEW) .]

**4**. **Technical assistance.** The Maine Apprenticeship Program may provide sponsors with technical assistance.

[ 2011, c. 491, §13 (NEW) .]

**5**. **Federal regulations.** The Maine Apprenticeship Program shall ensure that all apprenticeship programs established under this chapter conform to 29 Code of Federal Regulations, Parts 29 and 30 and any applicable regulations of the United States Department of Labor, Office of Apprenticeship.

[ 2011, c. 491, §13 (NEW) .]

**6**. **Education.** The Maine Apprenticeship Program shall cooperate with the Department of Education, local school authorities such as adult education and career and technical education centers and other groups in organizing and establishing related instruction for apprentices employed under approved apprenticeship agreements.

A. A public educational institution or sponsor may provide related instruction according to established policies. As funds permit, the Department of Labor shall underwrite 50% of tuition costs for apprentices in good standing at public educational institutions and provide training cost assistance to sponsor groups in accordance with sponsor policies. To ensure that adequate funds are available for related instruction, the Maine Apprenticeship Program shall establish a biennial plan, including projected apprenticeship enrollments and a subsequent budget request. [2011, c. 491, §13 (NEW).]

B. The Maine Apprenticeship Program shall assist the Department of Education, the State's community colleges, local school authorities such as adult education and career and technical education centers and other groups in promoting, developing and establishing student preapprenticeship programs and adult preapprenticeship programs if the community colleges, local school authorities and other groups wish to do so. A participant who successfully completes a preapprenticeship program meets the qualifying standards of a registered apprenticeship program. [2011, c. 491, §13 (NEW).]

[ 2011, c. 491, §13 (NEW) .]

SECTION HISTORY
2011, c. 491, §13 (NEW).

## §3212. RULEMAKING

The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A to implement the provisions of this chapter. [2011, c. 491, §13 (NEW).]

SECTION HISTORY
2011, c. 491, §13 (NEW).

# Chapter 39: MAINE INDUSTRY PARTNERSHIPS

## §3301. ESTABLISHMENT; PURPOSE

A cooperative initiative is established within the Office of the Governor to create Maine industry partnerships pursuant to this chapter. The Industry Partnership Assistance Collaborative is also established in the Office of the Governor and administered by the Commissioner of Labor and consists of representatives from the Department of Labor, the Department of Education, the Department of Economic and Community Development, the University of Maine System and the Maine Community College System. An industry partnership is led by representatives from business and industry with assistance from the Industry Partnership Assistance Collaborative. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

The purpose of the industry partnership cooperative initiative is to ensure that employees in this State are directed toward and trained in the high-skill, high-demand, livable-wage jobs of the 21st century economy. Industry partnerships shall align education and training programs with industry needs to produce readily employable workers and bring employers together in a collaborative effort to improve the competitiveness of individual businesses, industry and the State's economy. Industry partnerships shall provide the foundation for the State's demand-driven workforce strategy designed to meet the workforce needs of businesses, the career goals and training needs of workers and the economic development objectives of this State. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

The Department of Labor may convene meetings of and coordinate the Industry Partnership Assistance Collaborative, but each member is responsible for that member's contributions to and support of industry partnerships, including financial resources. Business and industry leaders engaging the Industry Partnership Assistance Collaborative shall coordinate their efforts through the Department of Labor but may use any appropriate Industry Partnership Assistance Collaborative member as their managing partner. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

*§3301. Short title (As enacted by PL 2013, c. 335, Pt. A, §1 is REALLOCATED TO TITLE 26, SECTION 3401)*

SECTION HISTORY
RR 2013, c. 1, §44 (RAL). 2013, c. 335, Pt. A, §1 (NEW). 2013, c. 368, Pt. FFFFF, §1 (NEW).

## §3302. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

**1**. **Career ladder.** "Career ladder" means a clear sequence of education course work or training that is aligned with an identified series of positions, work experiences or educational benchmarks or training credentials that offer occupational and financial advancement within a specified career field or related fields over time.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**2**. **Collaborative.** "Collaborative" means the Industry Partnership Assistance Collaborative established in section 3301.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**3**. **Educational programs.** "Educational programs" means the State's elementary and secondary schools, career and technical education centers, adult education programs, the Maine Community College System, the Maine Maritime Academy and the University of Maine System.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**4**. **High-priority occupations.** "High-priority occupations" means occupations that have a significant presence in an industry cluster, are in demand by employers, pay a livable wage or have a documented career ladder.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**5**. **Industry cluster.** "Industry cluster" means a group of employers closely linked by a common product or services, workforce needs, similar technologies, supply chains or other industry sector factors.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**6**. **Industry partnership.** "Industry partnership" means a workforce collaboration that brings together multiple employers and employees, or employee representatives when appropriate, in the same industry cluster to address common workforce needs.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**7**. **Soft skills.** "Soft skills" means those basic skills necessary to obtain and maintain employment, such as interviewing and communications skills.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**8**. **Targeted industry cluster.** "Targeted industry cluster" means an industry cluster identified by the collaborative pursuant to section 3303, subsection 2 as having statewide economic impact, immediate or long-term workforce development needs and emerging or competitive career opportunities.

*§3302. Definitions (As enacted by PL 2013, c. 335, Pt. A, §1 is REALLOCATED TO TITLE 26, SECTION 3402)*

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

SECTION HISTORY
RR 2013, c. 1, §45 (RAL). 2013, c. 335, Pt. A, §1 (NEW). 2013, c. 368, Pt. FFFFF, §1 (NEW).

## §3303. INDUSTRY CLUSTERS

**1**. **Specific industry clusters.** The collaborative shall work with businesses, industry associations and organizations, workforce and economic development agencies, the State Workforce Investment Board established in section 2006 and the boards of the local workforce investment areas designated pursuant to the federal Workforce Investment Act of 1998, Public Law 105-220 and economic development entities to define specific industry clusters based on the following criteria:

A. Statistics showing the competitiveness of an industry cluster; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

B. Importance to the State's or a region's economic development; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

C. Identification of supply and distribution chains within an industry; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

D. Research studies on industry clusters; and [2013, c. 368, Pt. FFFFF, §1 (NEW).]

E. Existing industry partnerships such as those of the health care workforce and associations of manufacturers. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**2**. **Targeted industry clusters.** The collaborative shall work with state and regional workforce and economic development agencies, with input from regional business and labor leaders, to identify which industry clusters are targeted for workforce and economic development investments based primarily on the following activities:

A. Economic growth potential; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

B. Competitiveness; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

C. Employment base; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

D. Wages, benefits and career opportunities; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

E. Importance of the industry cluster to the state and regional economies; and [2013, c. 368, Pt. FFFFF, §1 (NEW).]

F. Workforce development needs. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**3**. **Evaluation of clusters.** Once during every 3-year period, the collaborative shall contract with an independent research organization to evaluate the industry clusters as to their importance to the State's economy and determine the need for any changes to the targeted industry clusters.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**4**. **Annual report.** The collaborative shall issue a report annually that includes information and statistics on the targeted industry clusters, including labor market information highlighting the targeted industry clusters. The report, which must be presented to the joint standing committee of the Legislature having jurisdiction over labor, commerce, research and economic development matters, must include an occupational analysis of employment and wages within the targeted industry clusters.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**5**. **Occupations list.** The collaborative shall develop and make available to the public on a yearly basis a list of statewide and regional high-priority occupations critical to the success of the targeted industry clusters.

*§3303. State agencies; requirements (As enacted by PL 2013, c. 335, Pt. A, §1 is REALLOCATED TO TITLE 26, SECTION 3403)*

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

SECTION HISTORY
RR 2013, c. 1, §46 (RAL). 2013, c. 335, Pt. A, §1 (NEW). 2013, c. 368, Pt. FFFFF, §1 (NEW).

## §3304. INDUSTRY PARTNERSHIPS

**1**. **Objectives.** The objectives of an industry partnership are to:

A. Organize businesses, employers, workers, labor organizations and industry associations into a collaborative structure that supports the sharing of information, ideas and challenges common to their industry cluster; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

B. Identify the training needs of multiple businesses, especially a shortage of skills that are critical to the competitiveness and innovation of the industry cluster; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

C. Facilitate economies of scale by aggregating training and education needs of multiple employers; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

D. Help educational and training institutions align curricula and programs to industry demand, particularly for high-skill occupations; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

E. Foster and strengthen relationships between and among education programs working to address the needs of related industry sectors; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

F. Facilitate relationships, remove barriers and leverage and align resources between participating departments and agencies of State Government and employers working to address the needs of related industry sectors; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

G. Inform and collaborate with the career and technical education centers, the boards of the local workforce investment areas designated pursuant to the federal Workforce Investment Act of 1998, Public Law 105-220, youth councils, business-education partnerships, secondary and postsecondary educational institutions, parents and career counselors for the purpose of addressing the challenges of connecting disadvantaged adults and youth to careers; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

H. Help companies identify and collaborate to address common organizational and human resource challenges, including, but not limited to, recruiting new workers, retraining dislocated workers, hiring foreign-trained professionals, retaining incumbent workers, implementing a high-performance work organization, adopting new technologies and fostering experiential and contextualized on-the-job learning; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

I. Develop and strengthen career ladders within and across companies, enabling entry-level workers to improve skills and advance to higher-wage jobs; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

J. Help companies in an industry partnership to attract potential employees from a diverse pool of persons seeking jobs, including veterans and individuals with barriers to employment, such as persons who are economically disadvantaged, people with disabilities, youth, older workers, ex-offenders and others; and [2013, c. 368, Pt. FFFFF, §1 (NEW).]

K. Strengthen connections among businesses in industry clusters, leading to cooperation beyond workforce issues that would improve competitiveness and job quality, such as joint purchasing, market research or centers for technology and innovation. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**2**. **Responsibilities of the collaborative.** The collaborative shall:

A. Provide support and staffing assistance to the industry partnerships established under this chapter; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

B. Create an industry partnership to advise the collaborative, the State Workforce Investment Board established in section 2006 and the boards of the local workforce investment areas designated pursuant to the federal Workforce Investment Act of 1998, Public Law 105-220 on aligning state policies and leveraging resources across systems, including workforce development, education and economic development; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

C. Include requirements that support industry partnerships in all relevant programs, grants and new initiatives; and [2013, c. 368, Pt. FFFFF, §1 (NEW).]

D. Use industry partnerships as a connective framework across systems and programs when applying for federal and private funds. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**3**. **Agency and educational program roles and responsibilities.** The collaborative shall provide staffing assistance to industry partnerships and shall assist the industry partnerships in achieving the objectives described in subsection 1. Other agencies that by statute, rule, funding or other policies affect employers and employees shall cooperate with the collaborative by:

A. Maintaining up-to-date information on jobs, wages, benefits, skills and careers of workers affected by such agency actions; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

B. Developing and implementing policies that improve the jobs and careers of workers affected by such agency actions; and [2013, c. 368, Pt. FFFFF, §1 (NEW).]

C. Reporting their job creation strategies and workforce needs to the collaborative. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**4**. **Evaluation information.** Upon request, all departments and agencies of this State shall provide to the collaborative any information that will assist the collaborative in carrying out the provisions of this chapter, including any performance measurement information necessary to evaluate any program or policy affecting workforce development in the State.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**5**. **Agency cooperation.** At a minimum, the following departments and agencies shall work with the collaborative in the following manner.

A. The Department of Labor shall:

(1) Coordinate the collaborative and serve as lead agency in convening collaborative members;

(2) Advise the collaborative of the Department of Labor's workforce and economic development strategies, programs and initiatives; and

(3) Align existing training programs with industry partnerships. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

B. The Department of Economic and Community Development shall:

(1) Advise the collaborative of the Department of Economic and Community Development's workforce and economic development strategies, programs and initiatives;

(2) Align existing training programs with industry partnerships;

(3) Make relevant business assistance programs available to industry partnerships;

(4) Coordinate with the collaborative on areas of business retention; and

(5) Advise the collaborative of the Department of Economic and Community Development's programs to improve competitiveness in industry and strategies for forming industry clusters. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

C. The Department of Corrections, within existing resources, shall:

(1) Align training for inmates with industry clusters and high-priority occupations and annually review these training programs to ensure that the training programs prepare inmates for high-priority occupations; and

(2) Align reentry programs to take advantage of information and career opportunities provided by industry partnerships. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

D. The Department of Education shall:

(1) Develop curricula and build cross-agency and program partnerships to support career pathways;

(2) Support innovative programs to address literacy, including English as a second language, numeracy shortcomings and soft skills training, especially in those occupations critical to targeted industry clusters;

(3) Work with the collaborative to develop programs and strategies to reduce barriers to adult education;

(4) Coordinate career education initiatives in middle and secondary schools, career and technical education programs and adult education;

(5) Facilitate employer engagement with local adult education and career and technical education programs to align training with employer needs;

(6) Advise the collaborative in developing industry partnerships and career pathways in cooperation with employers;

(7) Coordinate educational initiatives with postsecondary education programs;

(8) Support initiatives to develop industry-recognized credentials and new programs providing academic credits in the State's public and private postsecondary institutions, especially in occupations critical to targeted industry clusters; and

(9) Work cooperatively with the collaborative and other agencies and education programs to leverage resources and share data regarding statewide workforce needs. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

E. The Department of Health and Human Services shall:

(1) Create and maintain innovative programs that connect qualified clients of the Temporary Assistance for Needy Families program, as defined in Title 22, section 3762, subsection 1, with employment opportunities in the targeted industry clusters;

(2) Support strategies to prepare those clients for success in postsecondary education and training programs;

(3) Work with other agencies and education programs to develop career pathways and education initiatives that provide those clients with information to guide their education and training plans; and

(4) Collect and share aggregate employment information with the relevant industry partnership to the extent allowed by applicable federal and state laws, rules and regulations. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

F. The Department of Professional and Financial Regulation shall:

(1) Advise the collaborative on professional licensing opportunities and criteria;

(2) Provide the collaborative aggregate information on active professional licenses as needed in analyzing data that will support or sustain industry partnerships; and

(3) Assist the collaborative in developing strategies that will reduce barriers to obtaining professional licensure within industry clusters where it may be required. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

G. The Maine Community College System shall:

(1) Develop curricula and build cross-postsecondary institution and program partnerships to support career pathways;

(2) Support innovative programs to address literacy, including English as a second language, numeracy shortcomings and soft skills training, especially in those occupations critical to targeted industry clusters;

(3) Work with the other members of the collaborative to develop programs and strategies to reduce barriers to adult education;

(4) Advise the collaborative in developing industry partnerships and career pathways in cooperation with employers;

(5) Coordinate educational initiatives with adult education and other postsecondary education programs;

(6) Support initiatives to develop industry-recognized credentials and new programs providing academic credits, especially in occupations critical to targeted industry clusters; and

(7) Work cooperatively with the collaborative and other agencies and education programs to leverage resources and share data regarding statewide workforce needs. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

H. The University of Maine System shall:

(1) Develop curricula and build cross-postsecondary education institution and program partnerships to support career pathways;

(2) Support innovative programs to address literacy, including English as a second language, numeracy shortcomings and soft skills training, especially in those occupations critical to targeted industry clusters;

(3) Work with other members of the collaborative to develop programs and strategies to reduce barriers to adult education;

(4) Advise the collaborative in developing industry partnerships and career pathways in cooperation with employers;

(5) Coordinate educational initiatives with adult education and other postsecondary education programs;

(6) Support initiatives to develop industry-recognized credentials and new programs providing academic credits, especially in occupations critical to targeted industry clusters; and

(7) Work cooperatively with the collaborative and other agencies and education programs to leverage resources and share data regarding statewide workforce needs. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

SECTION HISTORY
2013, c. 368, Pt. FFFFF, §1 (NEW).

## §3305. INDUSTRY PARTNERSHIP GRANT PROGRAM

**1**. **Grant program.** The collaborative shall establish a competitive grant program that provides support to industry partnerships and eligible applicants pursuant to this section. The grants must be used to provide training or the ability for local, state or regional industry partnerships to meet the objectives listed in section 3304.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**2**. **Applications and guidelines.** The collaborative shall establish grant guidelines and develop grant applications and forms and institute any policies and procedures necessary to carry out the provisions of this section. These procedures must include at a minimum:

A. A competitive application process; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

B. A process to review applications and to make recommendations to the collaborative; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

C. A process for providing applicants with additional information about eligibility requirements and assistance in preparing applications; and [2013, c. 368, Pt. FFFFF, §1 (NEW).]

D. A procedure for establishing eligibility requirements. At a minimum, this procedure must include the following:

(1) Involvement of the local workforce investment board;

(2) Participation of at least 4 employers, with at least 2 employers representing businesses with fewer than 50 employees;

(3) Participation of employees and, where applicable, labor representatives;

(4) Private sector matching funding of at least 25%, except that businesses with fewer than 25 employees may be exempted from this matching funding requirement at the discretion of the collaborative; and

(5) Commitment to participate in the performance improvement and evaluation system established pursuant to section 3307. [2015, c. 156, §1 (AMD).]

[ 2015, c. 156, §1 (AMD) .]

**3**. **Grant period and renewal.** The grant period for grants awarded under this section must be not less than 12 months and not more than 24 months. The collaborative may provide opportunities for renewal after the initial grant period ends.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**4**. **Technical assistance.** The collaborative shall provide technical assistance to grantees throughout the grant period.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**5**. **Other funding sources.** The collaborative shall seek funds from other private and public sources to support and sustain industry partnerships and related activities established in this chapter. Industry partnerships also may seek other sources of funding, both public and private.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

SECTION HISTORY
2013, c. 368, Pt. FFFFF, §1 (NEW). 2015, c. 156, §1 (AMD).

## §3306. INDUSTRY AND LABOR MARKET RESEARCH

The collaborative may provide any industry and labor market research necessary to support and further develop the work of industry partnerships, including, but not limited to: [2013, c. 368, Pt. FFFFF, §1 (NEW).]

**1**. **Employment analysis.** Providing the most current available analysis of occupations and skills in the State for the purpose of determining trends in the State that may lead to changes in the targeted industry clusters;

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**2**. **High-priority occupations list.** Maintaining and updating the annual list of the State's high-priority occupations under section 3303, subsection 5; and

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**3**. **List adjustment.** Providing the most current available analysis of high-priority occupations for the purpose of determining trends that may lead to adjustments to the list under subsection 2.

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

SECTION HISTORY
2013, c. 368, Pt. FFFFF, §1 (NEW).

## §3307. INDUSTRY PARTNERSHIP PERFORMANCE IMPROVEMENT AND EVALUATION SYSTEM

**1**. **Improvement and evaluation system.** The collaborative shall create and implement a performance improvement and evaluation system that:

A. Collects critical industry partnership information on an annual basis, or more frequently as determined by the collaborative; [2013, c. 368, Pt. FFFFF, §1 (NEW).]

B. Describes the benefits of the collaborative and its activities to employers, employees and communities; and [2013, c. 368, Pt. FFFFF, §1 (NEW).]

C. Provides periodic performance information to the Legislature, the public and workforce stakeholders. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

**2**. **Cluster partnership reviews.** The collaborative shall coordinate year-end reviews of each industry cluster's industry partnerships and produce a comprehensive industry cluster overview report that describes:

A. The critical experiences of each industry partnership, such as training that was most effective; most common human resource challenges; the impact of changing technology on the industry; and prospective changes that may affect the industry in the near term and long term; and [2013, c. 368, Pt. FFFFF, §1 (NEW).]

B. Practices that industry partnerships consider exemplary, such as effectively engaging adult education programs and postsecondary educational institutions, internships and clinical placements; working with effective training providers; working with career and technical education centers; and other important practices by which industry partnerships can assist each other. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

[ 2013, c. 368, Pt. FFFFF, §1 (NEW) .]

SECTION HISTORY
2013, c. 368, Pt. FFFFF, §1 (NEW).

## §3308. RULEMAKING

The Commissioner of Labor shall adopt rules for the operation of industry partnerships funded in whole or in part under this chapter. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [2013, c. 368, Pt. FFFFF, §1 (NEW).]

SECTION HISTORY
2013, c. 368, Pt. FFFFF, §1 (NEW).

# Chapter 41: EMPLOYMENT FIRST MAINE ACT

## §3401. SHORT TITLE

***(REALLOCATED FROM TITLE 26, SECTION 3301)***

This chapter may be known and cited as "the Employment First Maine Act." [2013, c. 1, §44 (RAL).]

SECTION HISTORY
RR 2013, c. 1, §44 (RAL).

## §3402. DEFINITIONS

***(REALLOCATED FROM TITLE 26, SECTION 3302)***

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2013, c. 1, §45 (RAL).]

**1**. **Customized employment.** "Customized employment" means employment acquired as a result of implementation of a flexible blend of strategies, services and supports designed to increase employment options for job seekers with complex needs through voluntary negotiation of the employment relationship with the employer.

[ 2013, c. 1, §45 (RAL) .]

**2**. **Disability.** "Disability" means a physical or mental disability as defined in Title 5, section 4553-A.

[ 2013, c. 1, §45 (RAL) .]

**3**. **First and preferred service or support option.** "First and preferred service or support option" means the first employment service option that is offered by a state agency, prior to the offer of other supports or services, including day services.

[ 2013, c. 1, §45 (RAL) .]

**4**. **Integrated community-based employment.** "Integrated community-based employment" means employment in the competitive labor market that is performed on a full-time or part-time basis in the general community or through self-employment and for which a person with a disability is compensated at or above the minimum wage but not less than the prevailing wage and level of benefits paid by the employer for the same or similar work performed by persons without disabilities.

[ 2013, c. 1, §45 (RAL) .]

**5**. **State agency.** "State agency" means the Department of Education, the Department of Health and Human Services or the Department of Labor.

[ 2013, c. 1, §45 (RAL) .]

SECTION HISTORY
RR 2013, c. 1, §45 (RAL).

## §3403. STATE AGENCIES; REQUIREMENTS

***(REALLOCATED FROM TITLE 26, SECTION 3303)***

**1**. **Employment as core component of services and supports.** In carrying out its duties to provide services and supports to persons with disabilities, a state agency shall include as a core component of its services and supports the opportunity for persons with disabilities to acquire integrated community-based employment or customized employment.

A. When entering into contracts with providers of services to persons with disabilities, a state agency shall include appropriate provisions regarding facilitating integrated community-based employment or customized employment and ensuring measurable outcomes. [2013, c. 1, §46 (RAL).]

B. A state agency shall incorporate standards for integrated community-based employment and customized employment into its processes for program monitoring and quality assurance. [2013, c. 1, §46 (RAL).]

[ 2013, c. 1, §46 (RAL) .]

**2**. **First and preferred service or support option.** When providing services or supports to a person with a disability, a state agency shall offer to the person, as the first and preferred service or support option, a choice of employment services that will support the acquisition by the person of integrated community-based employment or customized employment.

[ 2013, c. 1, §46 (RAL) .]

**3**. **Coordination of efforts and information.** A state agency shall:

A. Coordinate its efforts with other state agencies to ensure that the programs directed, the funding managed and the policies adopted by each state agency support the acquisition by persons with disabilities of integrated community-based employment or customized employment; and [2013, c. 1, §46 (RAL).]

B. When permissible under the law, share information regarding the use of services and other data with other state agencies in order to monitor progress toward facilitating the acquisition by persons with disabilities of integrated community-based employment or customized employment. [2013, c. 1, §46 (RAL).]

[ 2013, c. 1, §46 (RAL) .]

**4**. **Pursuit of employment; option.** Nothing in this chapter may be construed to require a person with a disability who receives services from a state agency to accept employment services from that state agency or to experience a loss of services as a result of choosing not to explore employment options.

[ 2013, c. 1, §46 (RAL) .]

**5**. **Rulemaking.** A state agency shall adopt rules to implement this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2013, c. 1, §46 (RAL) .]

SECTION HISTORY
RR 2013, c. 1, §46 (RAL).

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